

Commonwealth Of Kentucky

Court Of Appeals

NO. 2000-CA-000353-MR

JAMES McCREARY JONES

APPELLANT

v. APPEAL FROM JEFFERSON CIRCUIT COURT
HONORABLE JUDITH McDONALD-BURKMAN, JUDGE
ACTION NO. 99-CR-001478

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING
** ** * * * * *

BEFORE: HUDDLESTON, JOHNSON, AND SCHRODER, JUDGES.

SCHRODER, JUDGE: James McCreary Jones appeals from a judgment of the Jefferson Circuit Court convicting him of operating a motor vehicle under the influence, fourth offense; operating a motor vehicle while license is revoked or suspended for driving under the influence, third offense; first-degree criminal mischief; illegal possession of marijuana; and illegal possession of drug paraphernalia. As that portion of the record necessary for reviewing appellant's claim has been omitted, we must assume the omitted record supports the trial court's findings, hence, we affirm.

According to the police report, the facts of the case are as follows. On January 26, 1998, at the 1900 block of Bardstown Road in Louisville, Kentucky, appellant was involved in a one-car accident. While heading southbound, appellant misjudged a curve, shearing off the bottom portion of a Louisville Gas & Electric pole and causing damage to the pole of over \$1,000. A check by the officer revealed prior DUI convictions, and that appellant's driver's license was currently suspended for DUI. The officer detected a heavy odor of an alcoholic beverage, and appellant appeared to be too intoxicated and injured from the accident to perform any field sobriety tests. The officer also found what he suspected was marijuana and cigarette paper in a cigarette pack on the passenger side floorboard of the vehicle. Appellant stated to the officer that he was operating the vehicle and was alone at the time of the accident. A blood test later showed appellant's blood alcohol content to be .20.

On November 24, 1999, appellant entered a conditional guilty plea to operating a motor vehicle under the influence, fourth offense; operating a motor vehicle while license is revoked or suspended for driving under the influence, third offense; first-degree criminal mischief; illegal possession of marijuana; and illegal possession of drug paraphernalia. On February 2, 2000, the court entered an order sentencing appellant to a total of three years to serve, probating the sentence for five years. This appeal followed.

Appellant argues on appeal that the Commonwealth did not present sufficient evidence at the November 24, 1999 guilty plea hearing to support appellant's conviction of operating a vehicle while intoxicated, or other moving vehicle violations, as there was insufficient evidence presented that he had actually been operating the vehicle while intoxicated. The hearing was videotaped, and appellant attempts to support his claim with cites to the videotape record referencing statements allegedly made at the hearing by the arresting officer. However, neither the videotape, nor a transcript, of the November 24, 1999 hearing is included in the record before this court, and thus we cannot review appellant's claim. The burden is on the appellant to insure that the appellate record includes so much of the trial record leading up to and including the judgment as is necessary for an adequate review. Fanelli v. Commonwealth, Ky., 423 S.W.2d 255, 257-58 (1968). When the complete record is not before the appellate court, that court must assume that the omitted record supports the decision of the trial court. Commonwealth v. Thompson, Ky., 697 S.W.2d 143, 145 (1985). Hence, we must assume that the omitted record of the hearing at which the police officer testified supports the trial court's findings. Additionally, the evidence which is in the record before this court, including the police report containing the aforementioned facts, clearly supports the judgment of the trial court. See, Blades v. Commonwealth, 957 S.W.2d 246 (1997).

For the aforementioned reasons, the judgment of the Jefferson Circuit Court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

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BRIEF FOR APPELLEE:

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