STATE OF MINNESOTA
IN COURT OF APPEALS
A07-707

State of Minnesota,
Respondent,

vs.

Trevor Schroepfer,
Appellant.

Filed June 3, 2008
Affirmed
Willis, Judge

Waseca County District Court
File No. CR-06-536

Lori Swanson, Attorney General, 1800 Bremer Tower, 445 Minnesota Street, St. Paul, MN 55101-2134; and

Paul M. Dressler, Waseca County Attorney, Waseca County Courthouse, 307 North State Street, Waseca, MN 56093 (for respondent)

Lawrence Hammerling, Chief Appellate Public Defender, Theodora Gaïtas, Assistant Public Defender, 540 Fairview Avenue North, Suite 300, St. Paul, MN 55104 (for appellant)

Considered and decided by Willis, Presiding Judge; Shumaker, Judge; and Poritsky, Judge.*

* Retired judge of the district court, serving as judge of the Minnesota Court of Appeals by appointment pursuant to Minn. Const. art. VI, § 10.

U N P U B L I S H E D O P I N I O N

WILLIS, Judge

Appellant challenges his conviction of second-degree driving while impaired, arguing that the evidence was insufficient to support the conviction. We affirm.

FACTS

On September 24, 2006, appellant Trevor Schroepfer, his friend Nancy Rodahl, and his sister Danielle Johannsen went to a bar in Waseca at about noon to watch a Vikings game. All three drank beer while at the bar; Schroepfer testified that he drank approximately four beers. After the game ended at about 3 p.m., the group went to a county park, where Rodahl and Johannsen continued to drink beer.

After approximately two and a half hours, Schroepfer and Rodahl left the park and went to Rodahl's home, where they began to argue. At about 6:30 p.m., Schroepfer decided to go for a drive in his truck to "cool down," but Rodahl attempted to stop him by grabbing the truck's door handle. Schroepfer acknowledged at trial that his truck made "unusual noises" as he drove away.

Shortly after 6:30 p.m., Waseca police officers responded to a call reporting that a woman was lying in the street. Officer Angie Grotberg, the first officer to arrive on the scene, found Rodahl lying in the street in front of Rodahl's home. Officer Grotberg also saw Schroepfer, who had returned to the scene, leaning over Rodahl. Officer Grotberg noticed the odor of an alcoholic beverage emanating from both Rodahl and Schroepfer. Officer Grotberg asked Schroepfer to move away from Rodahl so that emergency personnel, who arrived shortly after Officer Grotberg, could treat Rodahl. Schroepfer

walked to the sidewalk and lit a cigarette. Officer Grotberg testified that she approached Schroepfer a second time and again detected a "fairly significant" odor of an alcoholic beverage coming from Schroepfer.

After a few minutes, Johannsen arrived at Rodahl's home, and Schroepfer and Johannsen went inside. Schroepfer testified that, after he and Johannsen went inside, he consumed four or five beers and "four or five swallows" of hard alcohol. One officer testified that Schroepfer had been inside for about two minutes before he and another officer approached the home to interview him. By the time that the officers had reached the door, the ambulance had left the scene. When Schroepfer came to the door, he said that he was going to walk to the hospital, which was a block away. Officers did not pursue him.

After Schroepfer had left, Johannsen told officers that she thought that Schroepfer had hit Rodahl with his truck. Sergeant Kris Markeson went to the hospital to find Schroepfer, and when he did, he noticed that Schroepfer's eyes were "bloodshot and watery," that he was "talking very loudly" with "slurred" speech, and that he had a "pretty strong" odor of an alcoholic beverage on his breath. Sergeant Markeson suspected that Schroepfer had driven while impaired and arrested him. Schroepfer agreed to provide a urine sample, which showed that his alcohol concentration was .14.

Schroepfer was charged with two counts of second-degree driving while impaired, driving after revocation, and failing to notify police of a personal-injury accident. At trial, Schroepfer's defense to the driving-while-impaired counts was that he had become impaired after driving, while he was inside Rodahl's home. In December 2006, a jury

found Schroepfer not guilty of driving while impaired (driving with an alcohol concentration of .08 or higher) but guilty of driving while impaired (driving while under the influence of alcohol). The jury also found Schroepfer guilty of failing to notify police of a personal-injury accident and driving with a revoked driver's license. Schroepfer appeals from the driving-while-impaired conviction.

D E C I S I O N

Schroepfer contends that the evidence was insufficient to support his conviction of second-degree driving while impaired. When considering a claim of insufficiency of the evidence, this court reviews the record to determine if the evidence, viewed in the light most favorable to the conviction, permitted the fact-finder to find the defendant guilty. *State v. Webb*, 440 N.W.2d 426, 430 (Minn. 1989). But this court will not retry the facts. *State v. Sheldon*, 391 N.W.2d 537, 539 (Minn. App. 1986). On review, we assume that the fact-finder credited the testimony of the state's witnesses and discredited any conflicting testimony. *State v. Pieschke*, 295 N.W.2d 580, 584 (Minn. 1980). An appellate court will not overturn a verdict if the jury, acting with due regard for the presumption of innocence and the necessity of proof beyond a reasonable doubt, could reasonably conclude that the defendant was proved guilty of the offenses charged. *Bernhardt v. State*, 684 N.W.2d 465, 476-77 (Minn. 2004).

Schroepfer was convicted of violating Minn. Stat. § 169A.20, subd. 1(1) (2006), which provides that "[i]t is a crime for any person to drive, operate, or be in physical control of any motor vehicle within this state . . . (1) when the person is under the influence of alcohol[.]" To prove that a defendant was under the influence of alcohol, the

state is required to prove that the defendant "was so affected by intoxicating liquor as not to possess that clearness of intellect and control of himself that he otherwise would have." *State v. Elmourabit*, 373 N.W.2d 290, 293 (Minn. 1985) (quotation omitted). That is, the state may obtain a conviction even if a defendant's alcohol concentration was less than .08, provided that the state shows that the defendant had consumed enough alcohol so that his "ability or capacity to drive was impaired in some way or to some degree." *See State v. Shepard*, 481 N.W.2d 560, 562 (Minn. 1992).

Schroepfer does not dispute that he drove a motor vehicle, but he claims that his conviction should be reversed because "the state failed to prove beyond a reasonable doubt that [he] was impaired at the time he drove, and there was significant evidence that he drank alcohol" after driving but before his arrest. Schroepfer's argument is unpersuasive.

The record contains sufficient evidence to support the jury's determination that Schroepfer was under the influence of alcohol before he entered Rodahl's home. Officer Grotberg testified that, on arriving at the scene of the accident, she detected the odor of an alcoholic beverage coming from both Schroepfer and Rodahl. And when Officer Grotberg approached Schroepfer a few moments later on the sidewalk, she noticed a "fairly significant" odor of an alcoholic beverage coming from him. Additionally, Officer Grotberg testified that Schroepfer's eyes "were red [and] watery." These observations led Officer Grotberg to conclude that Schroepfer was under the influence of alcohol before he had entered Rodahl's home:

[Counsel:] With your experience and training and considering what you observed of [Schroepfer] on September 24, do you have an opinion about whether or not he was under the influence of alcohol?

[Grotberg:] I believe he was.

[Counsel:] In your opinion, was the defendant under the influence of alcohol when you first saw him on Fourth Avenue Northwest?

[Grotberg:] I believe he was, yes.

[Counsel:] Before he went into Ms. Rodahl's house?

[Grotberg:] Correct.

The record includes evidence, therefore, that Schroepfer was under the influence of alcohol before he entered Rodahl's home and consumed more alcoholic beverages. *See State v. Teske*, 390 N.W.2d 388, 390-91 (Minn. App. 1986) (concluding that the evidence was sufficient to sustain conviction of driving under the influence of alcohol when officers testified that the defendant had, among other things, "glassy and bloodshot" eyes and "an odor of alcohol").

Schroepfer's admission that he had consumed alcohol during the afternoon of September 24 provides additional support for the jury's verdict. Schroepfer testified that he drank approximately four beers between noon and 3 p.m. as he watched the Vikings game. Although three hours had elapsed between the time that he consumed alcohol at the bar and the time that he drove his truck away from Rodahl's home, this evidence supports the jury's determination that Schroepfer was under the influence of alcohol before he entered Rodahl's home.

Finally, Schroepfer's behavior after the accident but before he entered Rodahl's home supports the jury's verdict. The record shows that Schroepfer left the scene of the accident. Intoxication is a "common reason" why people leave the scene of an accident. *Shepard*, 481 N.W.2d at 563 (quotation omitted). The jury could have reasonably inferred from Schroepfer's flight that he knew that he was under the influence of alcohol.

We conclude that, viewed in the light most favorable to the conviction, the record contains sufficient evidence for the jury to find Schroepfer guilty of driving while impaired.

Affirmed.