NO. COA06-1250

NORTH CAROLINA COURT OF APPEALS

Filed: 01 May 2007

STATE OF NORTH CAROLINA

v. Haywood County
No. 05 CRS 52833

TIMOTHY SCOTT CRUMP

Appeal by defendant from judgments entered 12 July 2006 by Judge J. Marlene Hyatt in Haywood County Superior Court. Heard in the Court of Appeals 16 April 2007.

Attorney General Roy Cooper, by Special Counsel Isaac T. Avery, III, for the State.

Allen W. Boyer, for defendant-appellant.

STEELMAN, Judge.

An officer stopped a motor vehicle and found defendant in the driver's seat with the two passengers passed out. Defendant admitted to a different officer that he was driving the vehicle. Either of these pieces of evidence was sufficient to support the trial court's denial of defendant's motion to dismiss a charge of driving while impaired as to the element of operation of a motor vehicle.

The State's evidence tended to show the that on the night of 6 August 2005, Haywood County Sheriff's Deputy Dan Sherrill

observed a brown van strike the sidewalk curb with its right front and rear tires before crossing the double-yellow center line into an oncoming lane of traffic while traveling on South Main Street in Waynesville, North Carolina. Sherrill activated his blue light and siren. The driver of the van shut off its lights and continued down South Main, crossing the double-yellow center line a second time near Auburn Road. Sherrill pulled his patrol car in front of the van and drove in front of it until it stopped. He exited his car and approached the van with his weapon drawn. As he reached the driver's side door, he saw defendant behind the steering wheel inside the van. When Sherrill opened the van's driver's side door, defendant "fell out on to the ground." Two male passengers were passed out in the front passenger's seat and the rear floor of the van.

After handcuffing defendant, Sherrill and Sergeant Jim Schick of the Haywood County Sheriff's Office helped him to the shoulder of the road. Defendant smelled strongly of alcohol, was disoriented, and unable to walk without assistance. North Carolina Highway Patrol Trooper Mark Jones arrived at the scene and took custody of defendant. When asked by Jones, defendant denied driving the van and refused to submit to a sobriety test. Jones noted that defendant was unsteady on his feet and had bloodshot eyes, slurred speech, and "an extremely strong odor of alcohol about his breath." Based on their observations, Sherrill, Schick and Jones each concluded that defendant had consumed a sufficient quantity of alcohol to impair his mental and physical faculties.

Jones transported defendant to the Waynesville Police Department, where he refused to submit to an Intoxilyzer test. After being advised of his *Miranda* rights, defendant acknowledged to Jones that he was driving the van from Canton to an address on Old Balsam Road and that he had consumed "two or three beers."

In his sole assignment of error, defendant contends that the trial court erred in denying his motion to dismiss at the conclusion of the evidence, absent sufficient proof that he was driving the van at the time it was observed by Sherrill. We disagree.

In reviewing the denial of a motion to dismiss, we must determine if the evidence at trial, when viewed in the light most favorable to the State, would allow a reasonable juror to find each essential element of a charged offense, including defendant's identity as the perpetrator, beyond a reasonable doubt. *State v. Cross*, 345 N.C. 713, 716-17, 483 S.E.2d 432, 434 (1997). For purposes of our review, the State is entitled to all favorable inferences reasonably arising from the evidence. *State v. Patterson*, 335 N.C. 437, 450, 439 S.E.2d 578, 585 (1994). The State's evidence "need not...point unerringly toward the defendant's guilt so as to exclude all other reasonable hypotheses." *State v. Steelman*, 62 N.C. App. 311, 313, 302 S.E.2d 637, 638 (1983). However, "'[i]f the evidence is sufficient only to raise a suspicion or conjecture as to...the identity of the defendant as the perpetrator of it, the motion should be allowed.'" *State v. Scott*, 356 N.C. 591, 595, 573 S.E.2d 866, 868 (2002)

(quoting *State v. Powell*, 299 N.C. 95, 98 261 S.E.2d 114, 117 (1980)).

We find no error by the trial court. The State presented evidence that Sherrill found defendant in the driver's seat of the van immediately after stopping the vehicle, and that defendant later admitted driving the van to Jones. Either of these pieces of evidence was sufficient to withstand the motion to dismiss. *See State v. Trexler*, 316 N.C. 528, 533, 342 S.E.2d 878, 881 (1986).

NO ERROR.

Judges McCULLOUGH and LEVINSON concur.

Report per Rule 30(e).