IN THE UTAH COURT OF APPEALS

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Roosevelt City, Plaintiff and Appellee, v. David Kole Wright, Defendant and Appellant.	MEMORANDUM DECISION (Not For Official Publication) Case No. 20090850-CA F I L E D (November 4, 2010) 2010 UT App 314

Eighth District, Roosevelt Department, 095000058
The Honorable A. Lynn Payne

Attorneys: Bryan Sidwell, Sandy; and Joel Berrett, Roosevelt, for Appellant
Bradley D. Brotherson, Roosevelt; and Clark B. Allred, Vernal, for Appellee

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Before Judges Davis, Voros, and Christiansen.

CHRISTIANSEN, Judge:

Following a bench trial, the trial court found defendant David Kole Wright guilty of driving under the influence of drugs, see Utah Code Ann. § 41-6a-502 (Supp. 2010).[1] Wright challenges the sufficiency of the evidence supporting his conviction. We affirm.

In evaluating the sufficiency of the evidence, this court will "sustain the trial court's judgment unless it is against the clear weight of the evidence, or if [we] otherwise reach[] a definite and firm conviction that a mistake has been made." State v. Larsen, 2000 UT App 106, ¶ 10, 999 P.2d 1252 (internal quotation marks omitted). To make such an evaluation, "we review the evidence and all reasonable inferences that may be drawn from it in a light most favorable to the verdict." West Valley City v. Hoskins, 2002 UT App 223, ¶ 7, 51 P.3d 52 (internal quotation

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[1]The legislature's recent amendments to this statute, see Utah Code Ann. § 41-6a-502(4) amend. notes (Supp. 2010), have no bearing on this case. We accordingly cite to the current version of the statute.

marks omitted). "[I]n those instances in which the trial court's findings include inferences drawn from the evidence, we will not take issue with those inferences unless the logic upon which their extrapolation from the evidence is based is so flawed as to render the inference clearly erroneous." State v. Briggs, 2008 UT 75, ¶ 11, 197 P.3d 628 (internal quotation marks omitted). Moreover, "[i]f, from the inferences alone, we are able to conclude that the findings are not clearly erroneous, we do not need the findings to be supported by direct evidence." State v. Valdez, 2003 UT App 100, ¶ 20 n.11, 68 P.3d 1052.

Wright challenges the trial court's determination that he was under the influence of an intoxicating substance at the time he was found behind the wheel of the vehicle. At trial, Officer Henry McKenna testified, "After several minutes of talking to [Wright] I was able to ascertain he had taken some medication." During cross-examination, Officer McKenna admitted that he did not recall whether Wright had told him this information during the incident at issue here, which occurred in the morning, or during a different encounter he had with Wright later that afternoon.[2] Wright points to Officer McKenna's inability to specifically recall when Wright made the statement and the officer's apparent failure to document the statement in his report as evidence that the court unreasonably relied on this information.[3] However, during cross-examination, the trial court clarified Officer McKenna's testimony by asking, "But he did tell you that he'd been taking medication?" Officer McKenna responded, "Yes. Not his medication either." Even assuming it was during the afternoon incident that Wright told Officer McKenna that he had been taking medication, the trial court could have reasonably inferred from these statements that Wright had taken the medication prior to the morning incident when he physically controlled the vehicle.[4]

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[2]Although the afternoon incident was mentioned during the trial, the details of this incident were never explained.

[3]Wright suggests that the trial court should not have relied on Officer McKenna's testimony because it was not credible given the discrepancies. However, we defer to the trial court's credibility assessments of witnesses. See State v. Pena, 869 P.2d 932, 935-36 (Utah 1994).

[4]The trial court could have reasonably inferred that Wright had taken medication that did not belong to him to benefit from its intoxicating side effects and that, given Officer McKenna's observations of Wright, the medication was of a type that could cause severe impairment. Thus, the type of medication was not

(continued...)

In addition, the degree of impairment that Officer McKenna observed reasonably supports the trial court's determination that the medication Wright had ingested rendered him incapable of safely operating a vehicle.[5] Officer McKenna observed Wright slumped in the driver's seat of a vehicle with the engine running, with a burned-out cigarette stump in his mouth and ashes on his shirt. Wright was oblivious for fifteen minutes of Officer McKenna's pounding on the windows. Officer McKenna testified that Wright "didn't even move. Didn't flinch, didn't move, didn't do anything." Officer McKenna then tried to pry open the door with a rod and was able to squeeze the rod inside to prod Wright. After five minutes of being prodded, Wright finally awoke. Wright could not figure out how to turn off the ignition, and even after he had turned off the engine, Wright repeatedly inserted and removed the keys from the ignition. Wright almost fell over as he stepped out of the vehicle, and he needed assistance just to remain standing. After Wright looked through his wallet several times to locate his driver license, Officer McKenna finally had to help him find it. Officer McKenna testified that he detained Wright in an officer's vehicle because Wright was "verbally abusive" and was "getting disorderly." When asked whether he had conducted any kind of field sobriety test, Officer McKenna responded, "We did try to do that, but he was so --so physically unable to maneuver, I didn't feel like it was a safe opportunity to do that." Essentially, the trial court could have reasonably inferred that Wright was impaired to the point

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[4](...continued)
essential to the trial court's finding that Wright was under the influence of medication, i.e., "any drug," as provided under Utah Code section 41-6a-502(1)(b), Utah Code Ann. § 41-6a-502(1)(b) (emphasis added).

[5]Wright also argues that the trial court incorrectly placed the burden on him to prove that he was impaired due to an illness or something other than drugs. On the contrary, in commenting on this issue, the trial court appeared to simply point out that no facts before the court suggested any cause for Wright's impairment other than the medication. A defendant is free to put on evidence to contradict those facts the government presents to establish guilt, but not doing so does not impermissibly shift the burden of proof to a defendant. The government must still prove guilt beyond a reasonable doubt. See State v. Whitely, 100 Utah 14, 110 P.2d 337, 339-40 (1941). In any event, the degree and nature of Wright's impairment in this case logically support the inference that he was intoxicated.

that he was physically unable to take field sobriety tests and to a degree that surpassed innocent explanation.[6]

Thus, because Wright has failed to convince us that the trial court's inferences regarding the cause of Wright's impairment are clearly erroneous, and given the evidence presented on the degree of Wright's impairment, there was sufficient evidence for the trial court to conclude beyond a reasonable doubt that Wright was under the influence of medication and was too impaired to safely operate a vehicle.

Affirmed.

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Michele M. Christiansen, Judge

I CONCUR:

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J. Frederic Voros Jr., Judge

I CONCUR IN THE RESULT:

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James Z. Davis,
Presiding Judge

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[6]A chemical test is not required to prove a violation of the DUI statute, see Utah Code Ann. § 41-6a-502(1)(b). Instead, a person can be found guilty so long as other evidence supports a finding beyond a reasonable doubt that the person "is under the influence of alcohol, any drug, or the combined influence [of both] to a degree that renders the person incapable of safely operating a vehicle." Id.; see also State v. Dunlap, 2010 UT App 122U, para. 4 (mem.) ("[E]ven if [the defendant]'s intoxilyzer results had been excluded, the jury could have 'consider[ed] all of the [other] evidence presented to determine whether his level of impairment was such that it was unsafe for him to drive.'" (third and fourth alterations in original) (quoting State v. Van Dyke, 2009 UT App 369, ¶ 36, 223 P.3d 465, cert. denied, 230 P.3d 127 (Utah 2010))).