

**IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI**

**WILLIE MARCUS KNIGHT**

**APPELLANT**

**VS.**

**NO. 2008-KM-0498**

**STATE OF MISSISSIPPI**

**APPELLEE**

**BRIEF FOR THE APPELLEE**

**APPELLEE DOES NOT REQUEST ORAL ARGUMENT**

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**STATEMENT OF THE ISSUES**

- I. The Trial Court did not err when it found that there was sufficient evidence to sustain Knight's conviction for DUI First Offense.
- II. The State proved beyond a reasonable doubt that Knight was operating his vehicle under the influence of alcohol as defined in Miss. Code Ann. § 63-11-30.
- III. The Trial Court correctly considered the totality of the circumstances in determining that Knight was guilty of DUI First Offense and did not improperly punish Knight for his reckless driving offense in the context of the DUI conviction and sentence.

**STATEMENT OF THE FACTS**

On January 27, 2007, Willie Marcus Knight was charged with operating his vehicle under the influence of alcohol as defined in Miss. Code Ann. § 63-11-30. On December 12, 2007, after a bench trial, the Trial Court, sitting as trier of law and fact, found Knight guilty of DUI First Offense and possession of beer.

Trial testimony established that Officer Leach was parked in a driveway near the

intersection of Chunky Duffee Road and Highway 494, observed Knight going west on Chunky Duffee Road. About twenty minutes later, Knight came back and went South on Chunky Duffee Road. He did not stop but rather accelerated and actually jumped Highway 494, with all four wheels off the ground. He proceeded north on Chunky Duffee Road. Officer Leach pursued Knight, stopped him and made an investigation. Officer Leach testified that he smelled the odor of intoxicating liquor. He asked Knight if he had been drinking and Knight replied, "I had a couple." Knight did not offer any explanations for his conduct. Officer Leach also observed a twenty pack of Coors beer in the back seat. The beer was still cool and there were 6 or 7 unopened cans. There were three other people in the car.

Leach offered Knight the right to take a portable intoxilizer, but refused, stating that he did not believe he could pass the test. Officer Leach then placed Knight in the back of his automobile and drove to Newton County and offered him a test under the Intoxilizer 8000, which Knight also refused.

#### **SUMMARY OF THE ARGUMENT**

The Circuit Court did not err when it found that there was sufficient evidence to sustain Knight's conviction for DUI First Offense. Officer Leach smelled intoxicating beverages on Knight. There was a 20 pack of still-cold beer in the truck with 6 or 7 beers remaining. And there were three other individuals in the truck. Knight admitted that he had "a couple" of beers. Knight's vehicle left the pavement as he crossed the intersection at a high rate of speed. When Knight refused to take the intoxilizer test, he told Officer Leach that he did not believe he would pass the test.

All of the above facts are probative as to whether Knight was operating his vehicle under the influence of alcohol as defined in Miss. Code Ann. § 63-11-30. In the present case, the judge

reviewed the trial testimony and determined that sufficient evidence existed for the trial judge, acting as the jury, to conclude that Knight was indeed guilty of DUI First Offense. Therefore, there is no merit in this assignment of error.

The State proved beyond a reasonable doubt that Knight was operating his vehicle under the influence of alcohol as defined in Miss. Code Ann. § 63-11-30.

The Trial Court correctly considered the totality of the circumstances in determining that Knight was guilty of DUI First Offense and did not improperly punish Knight for his reckless driving offense in the context of the DUI conviction and sentence.

### **ARGUMENT**

#### **I. The Circuit Court did not err when it found that there was sufficient evidence to sustain Knight's conviction for DUI First Offense.**

Knight challenges the sufficiency of the evidence. When the legal sufficiency of the evidence is challenged, the appellate court will not retry the facts. Rather, the appeals court must assume that the fact-finder believed the State's witnesses and disbelieved any contradictory evidence. *McClain v. State*, 625 So.2d 774, 778 (Miss.1993); *Griffin v. State*, 607 So.2d 1197, 1201 (Miss.1992). To determine whether there is an insufficiency as to any element of the offense, we consider all the evidence as to that element in the light most favorable to the State. *McClain*, 625 So.2d at 778. All credible evidence which is consistent with the defendant's guilt "must be accepted as true," and the State is "given the benefit of all favorable inferences that may be reasonably drawn from the evidence." *Id.* Appellate courts will reverse only where, "with respect to one or more of the elements of the offense charged, the evidence so considered is such that reasonable and fair-minded jurors could only find the accused not guilty." *Id.* Where testimony is conflicting, the trial judge sitting as trier of fact, is in the best position to weigh the

testimony and decide which is more credible. *In re G.L.H.*, 843 So.2d 109 (Miss.App.,2003.) Citing, *Carter v. Carter*, 735 So.2d 1109, 1114 (Miss.Ct.App.1999). In a bench trial, the judge is “the jury” for all purposes of resolving issues of fact. *Id.* Citing, *Evans v. State*, 547 So.2d 38, 40 (Miss.1989).

In the case *sub judice*, the trial court reviewed the testimony and found that:

- 1) Officer Leach smelled intoxicating beverages on Knight.
- 2) There was a 20 pack of still-cold beer in the truck with 6 or 7 beers remaining.  
And there were three other individuals in the truck.
- 3) Knight admitted that he had “a couple” of beers.
- 4) Knight’s vehicle left the pavement as he ran a stop sign and crossed the intersection at a high rate of speed.
- 5) When Knight refused to take the intoxilizer test, he told Officer Leach that he did not believe he would pass the test.

All of the above facts are probative as to whether Knight was operating his vehicle under the influence of alcohol as defined in Miss. Code Ann. § 63-11-30. The trial court held that under the totality of the circumstances, the proof was sufficient to convict Knight of DUI First Offense. Further, § 63-11-41 states that “[i]f a person under arrest refuses to submit to a chemical test . . . evidence of refusal shall be admissible in any criminal action. . . .”

Knight argues that the fact that Leach did not observe him stumbling, staggering, having difficulty walking, slurring his speech or having bloodshot eyes is proof of his sobriety.

However, this proof is belied by his own admission that he had “a couple of beers” and the he did not believe that he would pass the intoxilizer test and by the other evidence in this case. Knight further argues that sailing through an intersection without touching the pavement is not “erratic”

driving and is not probative of whether or not he was intoxicated. It is the duty of the finder of facts to review the totality of the evidence. Reckless driving is certainly probative of intoxication, and in light of the other facts of this case, is particularly compelling proof.

In the present case, the judge reviewed the trial testimony and determined that sufficient evidence existed for the trial judge, acting as the jury, to conclude that Knight was indeed guilty of DUI First Offense. Therefore, there is no merit in this assignment of error.

**II. The State proved beyond a reasonable doubt that Knight was operating his vehicle under the influence of alcohol as defined in Miss. Code Ann. § 63-11-30.**

The DUI charge against Knight required the State to present evidence showing that Knight violated Miss.Code Ann. § 63-11-30 (Rev.2004). Section 63-11-30(1) states in pertinent part “[i]t is unlawful for any person to drive or otherwise operate a vehicle within this state who is under the influence of an intoxicating liquor.” Thus, pursuant to the clear language of the statute, in order to find Knight guilty of DUI First Offense, the State was required to prove beyond a reasonable doubt (1) that Knight was operating a motor vehicle, and (2) Knight was under the influence of intoxicating liquor. *McLendon v. State*, 945 So.2d 372 (Miss.,2006)

As noted above, the trial court in this case reviewed the testimony and found that:

- 1) Officer Leach smelled intoxicating beverages on Knight.
- 2) There was a 20 pack of still-cold beer in the truck with 6 or 7 beers remaining.  
And there were three other individuals in the truck.
- 3) Knight admitted that he had “a couple” of beers.
- 4) Knight’s vehicle left the pavement as he crossed the intersection at a high rate of speed.
- 5) When Knight refused to take the intoxilizer test, he told Officer Leach that he did



not believe he would pass the test.

Knight cites *Richbourg v. State*, 744 So.2d 352 (Miss.Ct.App.1999) for the proposition that the odor of intoxicating beverages and the presence of unopened beer cans in the trunk along with refusal to take an intoxilizer test are insufficient evidence to prove driving under the influence. However, the instant case is distinguishable from *Richbourg*. The beers in the vehicle were warm and in the trunk of the vehicle. In the instant case, the a twenty pack of cool beers with only 6 or 7 remaining in the box were in the cab of the truck. Further, Knight made two admissions about his state of intoxication, first telling Officer Leach that he had had “a couple of beers” and then stating that he declined the intoxilizer test because he did not think he would pass it. Also, Knight’s driving at such a high rate of speed that he “jumped” the intersection is certainly probative as to whether he was intoxicated at the time. These facts are clearly sufficient to support the trial court’s finding that Knight was guilty of DUI First Offense.

Viewing all the evidence in the light most favorable to the verdict, the trial court did not err in its denial of Knight's Motion for Reconsideration and in the Alternative for a New Trial. It is clear from the record that, as a matter of well-established law, the judgment of guilty rendered by the trial judge is not so contrary to the overwhelming weight of the evidence that it would be sanctioning an unconscionable injustice by allowing the judgment of guilty to stand. Therefore, the judgment of guilty as entered by the trial court is well beyond an appellate court’s authority to disturb. *Bush*, 895 So.2d at 844. Since the trial court did not abuse its discretion in denying Knight's motion for a new trial, this issue is devoid of merit.

This issue is wholly without merit and the judgment of the trial court should be affirmed.

**III. The Trial Court correctly considered the totality of the circumstances in determining that Knight was guilty of DUI First Offense and did not improperly punish Knight for his reckless driving offense in the context of the DUI conviction and sentence.**

Knight was driving at such a high rate of speed that he “jumped” the intersection is certainly probative as to whether he was intoxicated at the time. Knight argues that sailing through an intersection without touching the pavement is not “erratic” driving and is not probative of whether or not he was intoxicated. However, it is the duty of the finder of facts to review the totality of the evidence. Reckless driving is certainly probative of intoxication, and in light of the other facts of this case, is particularly compelling proof.

In the present case, the judge reviewed the trial testimony and determined that sufficient evidence existed for the trial judge, acting as the jury, to conclude that Knight was indeed guilty of DUI First Offense. Therefore, there is no merit in this assignment of error. The Trial Court did not improperly consider the probative evidence of Knight’s reckless driving. The facts are clearly sufficient to support the trial court’s finding that Knight was guilty of DUI First Offense.

Viewing all the evidence in the light most favorable to the verdict, the trial court did not err in its denial of Knight's Motion for Reconsideration and in the Alternative for a New Trial. It is clear from the record that, as a matter of well-established law, the judgment of guilty rendered by the trial judge is not so contrary to the overwhelming weight of the evidence that it would be sanctioning an unconscionable injustice by allowing the judgment of guilty to stand. Therefore, the judgment of guilty as entered by the trial court is well beyond an appellate court’s authority to disturb. *Bush*, 895 So.2d at 844. Since the trial court did not abuse its discretion in denying Knight's motion for a new trial, this issue is devoid of merit.

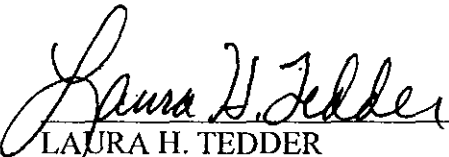

This issue is wholly without merit and the judgment of the trial court should be affirmed.

CONCLUSION

The assignments of error presented by Knight are without merit and the Trial Court should be affirmed.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

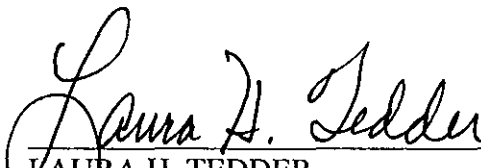
I, Laura H. Tedder, Special Assistant Attorney General for the State of Mississippi, do hereby certify that I have this day mailed, postage prepaid, a true and correct copy of the above and foregoing **BRIEF FOR THE APPELLEE** to the following:

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This the 15th day of October, 2008.

  
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