

IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT  
IN AND FOR PALM BEACH COUNTY, FLORIDA

STATE OF FLORIDA,

Appellant,

APPELLATE DIVISION (CRIMINAL) "AC"

CASE NO: 502012AP900030XXXXMB

L.T. NO: 502010CT016121XXXXMB

v.

DERMAINE WILLIAMS,

Appellee.

Appealed: April 3, 2012

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Opinion filed: **SEP 27 2013**

Appeal from the County Court in and for Palm Beach County, Judge Marni Bryson

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PER CURIAM.

The State of Florida ("Appellant" or "State") appeals the trial court's order granting Defendant/Appellee, Dermaine Williams' ("Appellee" or "Defendant"), motion for judgment of acquittal ("JOA"). We find that the evidence presented at trial was sufficient to defeat the motion and reverse.

Defendant was arrested for, and convicted of, driving under the influence of an alcoholic beverage to the extent his normal faculties were impaired. During the trial, the State presented testimony from two deputies who observed Defendant first hand. One deputy reported that Defendant sped almost thirty miles over the speed limit, did not pull over immediately when the deputy activated

his emergency lights, had red, glassy eyes, and had an odor of an alcoholic beverage. The second deputy, who conducted the DUI investigation, reported Defendant had red, glassy eyes, his speech appeared slurred, and had an odor of an alcoholic beverage. The deputy also reported that Defendant used the car for balance to step out of the car and admitted to having two beers prior to driving. Lastly, the second deputy reported Defendant performed poorly on the field sobriety tests.

During the pen light task, Defendant followed the light while swaying in a circular motion. During the walk-and-turn exercise, Defendant took the correct number of steps but wobbled side to side, raised his arms to maintain balance, and did not count aloud each step. During the one-leg exercise, Defendant correctly counted but raised his arms for balance and was unable to keep his leg lifted for more than four seconds. Finally, during the finger-to-nose exercise, Defendant maintained his balance and used the correct hand when called upon to do so, but touched his cheek instead of his nose on all counts and had to be reminded to keep his eyes closed and return his hands to his sides. The deputy did not ask Defendant to perform the Romberg alphabet exercise because Defendant stated he was unable to perform the task.

The State also published the video from the Breath and Alcohol Testing Center ("BAT") where Defendant refused to submit to testing, repeatedly responded to questions with "I passed all your tests," and was told repeatedly to remain on the yellow line at the facility. The footage also shows Defendant stating that he drank "one cup" of alcohol.

Defendant moved for a JOA after the State rested its case, on which the trial judge reserved ruling until after the verdict. After the jury rendered a guilty verdict, the trial judge granted the Defendant's motion. When the trial court orally granted the JOA, it stated:

"There is not one piece of evidence, and I understand that disturbing a jury's verdict is one of the things that we as judges try never to do, however in this case and although you did a very convincing job I did not see one piece of evidence as to how a

reasonable person could find that this defendant beyond a reasonable doubt drove to the extent that his normal faculties were impaired.”

In the court’s written order, it stated:

“This Court finds at the close of all the evidence, the same was insufficient to warrant a conviction. Specifically, the State failed to present sufficient evidence to prove Defendant’s normal faculties were impaired. In order to prove the crime of DUI at the instant trial, the State relied on testimony from the arresting officer. The officer testified that the Defendant was speeding, Defendant was on his way to meet friends at a “strip club,” and the Defendant admitted to drinking one cup of beer. Additionally, the officer testified that the Defendant was slurring his words. However, the recording of the Defendant’s interactions with officers in the instant case did not corroborate that testimony. The Defendant is an African-American male. Although his speech may not mirror that of the officer, it is not slurred.”

On appeal, the State argues that the trial judge erred in granting the JOA because there was legally sufficient evidence to allow a reasonable person to conclude that Defendant’s normal faculties were impaired beyond a reasonable doubt.

At the close of the evidence for the State, or at the close of all the evidence in the cause, the court may, and on a motion of the prosecution or the defendant shall, enter a JOA if the court is of the opinion that the evidence is insufficient to warrant a conviction. Fla. R. Crim. P. 3.380. To warrant a conviction, the State must “prove each and every element of the offense charged beyond a reasonable doubt, and when the [State] fails to meet this burden, the case should not be submitted to the jury, and a judgment of acquittal should be granted.” *Baugh v. State*, 961 So. 2d 198, 204 (Fla. 2007) (quoting *Williams v. State*, 560 So. 2d 1304, 1306 (Fla. 1st DCA 1990)). The trial court’s task is to “review the evidence to determine the presence or absence of competent evidence from which the jury could infer guilt to the exclusion of all other inferences.” *Durousseau v. State*, 55 So. 3d 543, 556 (Fla. 2010) (quoting *State v. Law*, 559 So. 2d 187, 189 (Fla. 1989)). “Competent evidence is matter probative of the fact to be proved; that is, relevant evidence that does not fit within any rule of exclusion. Evidence is substantial if a reasonable mind might accept it to support a conclusion.”

*Bussell v. State*, 66 So. 3d 1059, 1061 (Fla. 1st DCA 2011) (quoting *Brumley v. State*, 500 So. 2d 233, 234 (Fla. 4th DCA 1986)).

“A trial court's ruling on a motion for judgment of acquittal is reviewed de novo to determine whether the evidence is legally sufficient to support the jury's verdict.” *State v. Konegan*, 18 So. 3d 697, 698 (Fla. 4th DCA 2009). “In criminal cases, legal sufficiency, as opposed to evidentiary weight, is the appropriate concern” of the appellate court. *Id.* (quoting *State v. Burrows*, 940 So. 2d 1259, 1261-62 (Fla. 1st DCA 2006)). The sufficiency of the evidence and the weight and credibility of the evidence are two different concepts. *State v. Smyly*, 646 So. 2d 238, 241 (Fla. 4th DCA 1994) (citing *Tibbs v. State*, 397 So. 2d 1120 (Fla. 1981)). The Fourth District Court of Appeal explained the difference:

Trial and appellate courts are equally capable of making the legal judgment whether the evidence is legally sufficient to allow the state's case to go to the jury and support a verdict. Legal sufficiency means that the state has adduced a bundle of evidence that, if believed by the jury, would constitute proof beyond a reasonable doubt on every element of the offense charged. The failure to produce legally sufficient evidence exonerates the defendant and requires his dismissal.

The weight and credibility of the evidence are different. Initially the inquiry is directed to the jury to weigh the legally sufficient evidence and assess its credibility. When the jury returns a verdict of guilty on legally sufficient evidence, however, the judge's role is not yet over. The trial judge may be asked under rule 3.600(a)(2) to assess the verdict in light of the weight and credibility of the evidence. In this regard, the trial judge sits as the seventh juror with a veto over the unanimous vote of the other six. If the trial judge determines that the verdict of guilty is against the weight of the evidence, that is not a determination that the evidence was legally insufficient so as to require an acquittal. Rather it represents the trial judge's disagreement with the jury's weighing of the evidence and allows the judge to order a new trial.

*Smyly*, 646 So. 2d at 241 (internal footnotes and citation omitted.)

In the case at bar, it is clear that, in addition to considering the legal sufficiency of the evidence, the trial court also weighed the evidence. Opinions of what a reasonable person may believe vary, and there are times when a trial judge may completely disagree with the jury's findings.

However, it is not the proper role of the judge to act as the seventh juror on a motion for judgment of acquittal. Any disputes in opinion as to a reasonable person standard or inconsistencies in the evidence are solely within the determination of the jury or, as discussed in *Smyly*, may be addressed by the trial court in a motion for new trial filed pursuant to Florida Rule of Criminal Procedure 3.600(a). 646 So. 2d at 241. The Fourth District Court of Appeal stated the proper scope succinctly: “Where there is contradictory, conflicting testimony, the ‘weight of the evidence and the witnesses’ credibility are questions solely for the jury’ and ‘the force of such conflicting testimony should not be determined on a motion for judgment of acquittal.’” *Konegan*, 18 So. 3d at 700 (citing *State v. Shearod*, 992 So. 2d 900, 903 (Fla. 2d DCA 2008)).

In this case, we find that the State presented legally sufficient evidence, as outlined *supra*, that tended to show Defendant’s normal faculties were impaired. Therefore, it was error for the trial court to enter a JOA. Furthermore, it was error for the trial court to consider the weight of the evidence, specifically the evidence of the Defendant’s slurred speech, in ruling on the motion for JOA. Accordingly, this matter is REVERSED AND REMANDED with instructions to reinstate the jury’s verdict.

(BURTON and McSORLEY, JJ., concur.) (RAPP, J., concurs, with an opinion.)

RAPP, J., concurring.

While I concur with the majority’s reversal relative to the trial court’s weighing of evidence, I write separately to express that this opinion does not prevent the trial court from granting a new trial on such a motion. This Court’s reversal is based upon the trial court’s weighing of evidence in consideration of a motion for judgment of acquittal; however the Defendant did not move for a new trial below. Accordingly, the reinstatement of the verdict in this case does not prevent the Defendant from moving for a new trial based upon the reasoning previously expressed by the trial court.