

IN THE
SUPREME COURT
OF THE
COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS,
Plaintiff-Appellee,

v.

JUAN PAN TENORIO GUERRERO,
Defendant-Appellant.

SUPREME COURT NO. 2010-SCC-0032-TRF
SUPERIOR COURT NO. 10-00357-TR

Cite as: 2011 MP 13

Decided November 28, 2011

Steven P. Pixley, Esq., Saipan, MP, for Defendant-Appellant.

Tiberius D. Mocanu, Esq., Assistant Attorney General, Office of the Attorney General, Saipan, MP, for Plaintiff-Appellee.

BEFORE: F. PHILIP CARBULLIDO, Justice Pro Tem; ROBERT J. TORRES, Justice Pro Tem; MICHAEL J. BORDALLO, Justice Pro Tem.

PER CURIAM:

¶ 1 Defendant Juan “Pan” Tenorio Guerrero (“Guerrero”) appeals his conviction for driving while under the influence of alcohol. Guerrero’s sole contention on appeal is that there was insufficient evidence for a reasonable trier of fact to find, beyond a reasonable doubt, that he was guilty of driving under the influence of alcohol in violation of 9 CMC § 7105(a). For the reasons stated herein, we AFFIRM the judgment of the trial court.

I. Facts

¶ 2 On the evening of March 4, 2010, Guerrero’s SUV struck a sedan driven by Chester Cuento (“Cuento”). The accident occurred in the northbound outer lane of Chalan Palé Arnold Road in the village of Gualo Rai, Saipan.¹

¶ 3 Officer Maverick Suares interviewed Guerrero at the scene of the accident. During the interview, Officer Suares noticed that Guerrero’s breath smelled of alcohol, his speech was slurred, his face was flushed, and his eyes were bloodshot. These observations led Officer Suarez to ask Guerrero whether he had consumed any alcoholic beverages prior to the accident. Guerrero initially denied consuming alcohol, but subsequently admitted to drinking one, and then two, glasses of wine at Oleai Beach Bar & Grill (“Oleai”). Guerrero asked Officer Suares to perform a Field Sobriety Test (“FST”), but Officer Suares refused because the lighting was poor and the ground was not level at the scene of the accident.

¶ 4 Officer Nam Hoon Kwon, an officer trained as an automobile crash investigator, surveyed the accident and interviewed Guerrero. Guerrero stated that he was driving in the outer lane of Chalan Palé Arnold when he noticed a pickup truck stopped on the inner lane with its hazard lights flashing. He told Officer Kwon that a sedan in the inner lane suddenly switched into the outer lane to avoid hitting the stopped vehicle. In response, Guerrero said that he applied his brakes about 200 feet from the sedan and that his SUV skidded and crashed into the sedan. While interviewing Guerrero, Officer Kwon noticed a strong odor of alcohol on Guerrero’s breath.

¶ 5 Officer Kwon then interviewed Cuento. Cuento told Officer Kwon that just prior to the accident he had observed a pickup truck with flashing hazard lights stopped in the inner northbound lane of Chalan Palé Arnold. Because the pickup truck had its hazard lights flashing, Cuento believed that pedestrians were crossing the road in front of the truck. He stopped his sedan in the outer lane next to the pickup truck

¹ Chalan Palé Arnold Road is also known as “Middle Road.”

and turned on his hazard lights. While Cuento was stopped, Guerrero's vehicle struck the rear of Cuento's sedan, causing extensive damage to the sedan and moderate damage to Guerrero's SUV.

¶ 6 After interviewing Guerrero and Cuento, Officer Kwon completed his inspection of the accident. He noted that it was a clear, dry evening. He found neither skid marks leading up to the site of the impact nor any asphalt embedded in Guerrero's tires. Based on this evidence, and on the large amount of damage sustained by Cuento's sedan, Officer Kwon concluded Cuento had been fully stopped at the time of the accident and Guerrero had failed to apply his brakes before striking Cuento's vehicle.

¶ 7 The nature of the accident and Guerrero's admitted alcohol consumption caused Officers Suarez and Kwon to form a reasonable suspicion that Guerrero was under the influence of alcohol at the time of the accident. They subsequently placed him under arrest. On the way to the Department of Public Safety ("DPS") station in Susupe, Officer Kwon again detected a strong odor of alcohol on Guerrero's breath. Upon arrival in Susupe, the officers asked Guerrero to take an FST, but Guerrero declined. Next, the officers took Guerrero to the breathalyzer room. Once inside, both officers noticed that Guerrero had a flushed face, bloodshot eyes, and slurred speech. Shortly thereafter, Guerrero's attorney arrived. On his attorney's advice, Guerrero refused to take a breath test. During the interview at the accident and throughout Guerrero's time in custody, neither Officer Suarez nor Officer Kwon observed Guerrero stumble, sway or do anything that suggested lack of motor coordination.

II. Nature of Proceedings

¶ 8 The Commonwealth charged Guerrero with failure to maintain a clear distance (9 CMC § 5251), driving under the influence of alcohol (9 CMC § 7105(a)(2)), refusal to submit to a breath test (9 CMC § 7106), and reckless driving (9 CMC § 7104(a)). After a bench trial, the trial court convicted Guerrero of all counts except reckless driving. The trial court issued a Judgment and Commitment Order sentencing Guerrero to imprisonment for sixty days, all suspended except for the first five days. Additionally, Guerrero's driver's license was suspended for six months, he was ordered to pay an \$1,100 fine, and he was placed on probation for a year, during which time he was prohibited from consuming any alcohol or patronizing bars. Guerrero appealed his conviction for driving under the influence of alcohol and, the Court granted an emergency stay of the final judgment pending resolution of this appeal.

III. Jurisdiction

¶ 9 We have jurisdiction over this appeal pursuant to 1 CMC § 3102(a).

IV. Standard of Review

¶ 10 In considering the sufficiency of the evidence, the Court cannot "weigh conflicting evidence or consider the credibility of witnesses." *Commonwealth v. Camacho*, 2002 MP 6 ¶ 108. Rather, the Court must "consider the evidence in the light most favorable to the government and determine whether any reasonable trier of fact could have found the essential elements of the crime beyond a reasonable doubt."

Commonwealth v. Andrew, 2007 MP 25 ¶ 4; *Commonwealth v. Blas*, 2007 MP 17 ¶ 4. Review encompasses all evidence, direct or circumstantial. *Commonwealth v. Shao Yong Wu*, 2007 MP 29 ¶ 6. In construing evidence, “[a]ll reasonable inferences are to be drawn in favor of the government, and any conflicts in the evidence are to be resolved in favor of the verdict.” *Camacho*, 2002 MP 6 ¶ 108 (citation omitted).

V. Analysis

¶ 11 The only issue Guerrero raises on this appeal is whether there was sufficient evidence such that a reasonable trier of fact could have convicted him of driving under the influence of alcohol in violation of 9 CMC § 7105(a). Title 9 CMC § 7105(a)(2) requires that the Commonwealth prove beyond a reasonable doubt that: (1) the defendant drove, operated or was in physical control of; (2) a vehicle; (3) while under the influence of alcohol. Guerrero concedes elements one and two. In finding that the Commonwealth carried its burden of proof as to the third element, the trial court relied on the testimony of Cuento, Officer Suarez, and Officer Kwon; its disbelief of Guerrero’s testimony based on statements made by Guerrero at the scene of the accident; Guerrero’s physical symptoms of alcohol consumption;² physical evidence at the scene of the accident; and the statutory inference of guilt that arises when a defendant refuses to take a breath test. Guerrero argues that this evidence was insufficient to uphold his conviction.

¶ 12 Guerrero first contends that because his conviction was obtained through use of circumstantial evidence, the Court should apply the “well-settled” “reasonable alternative hypothesis” standard of review.³ He relies upon *State v. Kulig*, 309 N.E.2d 897 (Ohio 1974) and *State v. Wisecup*, No. 11400, 1989 Ohio App. LEXIS 3393 (Ohio Ct. App. August 31, 1989) for the proposition that his conviction should be reversed if the circumstantial evidence against him “is as consistent with a theory of innocence as with a theory of guilt.” *Kulig*, 309 N.E.2d at 899; *see also Wisecup*, 1989 Ohio App. LEXIS 3393 at *7. Unfortunately for Guerrero, the “reasonable alternative hypothesis” standard of review has not been widely adopted. To the contrary, the Court explicitly rejected this standard once before. *See Commonwealth v. Scragg*, 2000 MP 4 ¶¶ 16-17 (rejecting appellant’s reliance on the “reasonable alternative hypothesis” rule from *McCafferty v. State*, 748 S.W.2d 489, 491 (Tex. Ct. App. 1988) and noting that later Texas cases overruled *McCafferty*). The United States Supreme Court rejected this standard more than fifty years ago in *Holland v. United States*, 348 U.S. 121, 138 (1954). Moreover,

² Guerrero argues that a reasonable trier of fact would have considered his alternative explanations for his slurred speech and bloodshot eyes. A review of the transcript reveals that the trial court did consider this evidence and that the trial court adopted the Commonwealth’s version of the facts based on the testimony of Cuento and Officers Suarez and Kwon. The trier of fact has wide latitude in determining which witnesses to believe and which to disbelieve. *Islam v. Islam*, 2009 MP 17 ¶ 17; *Commonwealth v. Jian Hua Zhang*, 2009 MP 6 ¶ 23.

³ While we recognize that Guerrero does not refer to the “reasonable alternative hypothesis” as a standard of review in his brief, it is the only possible application of the rule.

subsequent Ohio Supreme Court cases have unequivocally rejected the *Kulig* and *Wisecup* holdings. See *State v. Webb*, 638 N.E.2d 1023, 1029 (Ohio 1994); *State v. Grant*, 620 N.E.2d 50, 62 (Ohio 1993); *State v. Jenks*, 574 N.E.2d 492, 502 (Ohio 1991) (collecting cases) *superseded in part by state constitutional amendment as recognized in State v. Smith*, 684 N.E.2d 668, 683 n.4 (Ohio 1997). The “reasonable alternative hypothesis” standard of review is not the law in this jurisdiction, and we reject it again today.

¶ 13 Guerrero also argues that there was insufficient evidence that he was under the influence of alcohol because the Commonwealth provided no evidence that he was driving erratically or that he lacked motor coordination. Guerrero directs the Court to *Commonwealth v. Martinez*, 2000 MP 5 ¶¶ 24-26, in which the Court upheld a conviction for driving under the influence of alcohol when there was evidence that the defendant weaved back and forth on the road and ultimately drove his car into a ditch. Guerrero argues that, unlike *Martinez*, there was no evidence that he operated his vehicle abnormally prior to the accident. Guerrero contrasts *Martinez* with *Commonwealth v. Andrew*, 2007 MP 25, in which a DPS officer pulled the defendant over on suspicion that the defendant was racing. *Id.* ¶ 2. Upon approaching the defendant’s vehicle, the officer noticed that the defendant’s breath smelled of alcohol and that there were nine unopened cans of beer on the defendant’s front seat. *Id.* ¶ 3. The defendant exited his vehicle without difficulty, did not lean on his vehicle for support, nor did he stumble or sway. *Id.* After being taken to DPS, the defendant refused to take an FST or a breath test. *Id.* On these facts, the Court held that there was insufficient evidence to uphold the defendant’s conviction because the only evidence against the defendant was “the smell of alcohol on his breath and his refusal to take a breathalyzer test.” *Id.* ¶ 7. Guerrero urges that the aforementioned lack of evidence of erratic driving coupled with the trial court’s express finding that he did not stumble or sway make his circumstances substantially similar to *Andrew* so as to warrant reversal of his conviction.

¶ 14 *Andrew* is distinguishable from the instant case because there is significantly more corroborating evidence that Guerrero operated his vehicle under the influence of alcohol. Two DPS officers repeatedly observed that Guerrero had not only a strong odor of alcohol on his breath, but also bloodshot eyes, a flushed face, and slurred speech. The eye, face, and speech indicators of alcohol consumption are conspicuously absent in *Andrew*. Moreover, after making a credibility determination, the trial court accepted the Commonwealth’s version of events, namely that Guerrero failed to brake on a clear, dry night while approaching two stopped vehicles, both of which had flashing hazard lights. There was no accident in *Andrew*. Furthermore, the statutory inference of guilt when a defendant refuses to take a breath test is stronger here than it was in *Andrew*.⁴ Although the *Andrew* defendant and Guerrero both

⁴ Title 9 CMC§ 7107(c) is the statutory basis for the inference of guilt. It reads in relevant part: “If a person under arrest refuses to submit to [a breath test] . . . , evidence of refusal shall be admissible in any civil or criminal action or proceeding arising out of acts alleged to have been committed while the person was operating . . . a motor vehicle while under the influence of alcohol or drugs.”

refused to take a breath test, the statutory inference of guilt is stronger here because Guerrero exhibited bloodshot eyes, a flushed face, and slurred speech in addition to the presence of alcohol on his breath. In *Andrew*, we held that evidence of alcohol on the breath, with no other physical symptoms of alcohol use, weakened the inference of guilt. *See Andrew*, 2007 MP 25 ¶¶ 9-10 (citing *Commonwealth v. Delos Reyes*, 4 NMI 340, 342 (1996)). Finally, there is evidence that Guerrero changed his story about the amount of wine he drank at Oleai and that he was not initially forthcoming about the manner in which the accident occurred. Nothing in *Andrew* suggests that the defendant was untruthful about his alcohol consumption or other circumstances leading up to his conviction. The trial court was entitled to rely on Guerrero's changing story in determining which witnesses to believe.

¶ 15 While each of the above-stated differences from *Andrew* standing alone is not sufficient to uphold Guerrero's conviction, it is clear from the transcript that the trial court considered all of these differences together with other evidence in reaching its verdict. Considering the evidence in the light most favorable to the Government and resolving all conflicts in favor of the verdict, we cannot say that the trial court erred in finding that Guerrero's consumption of wine at Oleai caused him to become inattentive to road conditions which resulted in the accident with Cuento. We reiterate that the standard of review on this appeal is whether *any* reasonable trier of fact could find the defendant guilty beyond a reasonable doubt. *Andrew*, 2007 MP 25 ¶ 4. This standard is highly deferential to the trial court. *United States v. Rubio-Villareal*, 967 F.2d 294, 296 (9th Cir. 1992). In considering the facts most favorable to the government, and in giving appropriate deference to the trial court, we are compelled to hold that there was sufficient evidence such that any reasonable trier of fact could have convicted Guerrero of driving under the influence of alcohol beyond a reasonable doubt.

VI. Conclusion

¶ 16 The judgment of the trial court is AFFIRMED. Accordingly, the emergency stay granted to Guerrero on October 14, 2010 is vacated.

SO ORDERED this 28th day of November, 2011.

/s/

F. PHILIP CARBULLIDO
Justice Pro Tem

/s/

ROBERT J. TORRES
Justice Pro Tem

/s/

MICHAEL J. BORDALLO
Justice Pro Tem