

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

COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS,)	APPEAL NO. 98-032
)	TRAFFIC CASE NO. 98-3872
Plaintiff/Appellee,)	
)	
v.)	OPINION
)	
ANTHONY C. SCRAGG,)	
)	
Defendant/Appellant.)	
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Argued and submitted November 23, 1999

Cite as: *Commonwealth v. Scragg*, 2000 MP 4

Counsel for Appellant:	Bruce Berline Saipan
Counsel for Appellee:	Ramona V. Manglona Assistant Attorney General Saipan

BEFORE: DEMAPAN, Chief Justice, CASTRO, Associate Justice, and WISEMAN, Special Judge.
CASTRO, Associate Justice:

[1,2]Defendant Anthony C. Scragg (“Scragg” or “Defendant”) appeals his traffic convictions for driving under the influence of alcohol (“DUI”) and refusing to submit to a breath test. We have jurisdiction pursuant to Article IV, Section 3 of the Commonwealth Constitution, as amended,¹ and 1 CMC § 3102. We affirm.

ISSUES PRESENTED AND STANDARD OF REVIEW

This appeal presents two issues for review. The first is whether there was evidence beyond a reasonable doubt that Defendant drove a car while under the influence of alcohol, in violation of 9 CMC § 7105. The second is whether there was sufficient evidence to support Defendant’s conviction for refusing

¹ N.M.I. Const. art. IV, § 3 was amended by the passage of Legislative Initiative 10-3, ratified by the voters on November 1, 1997 and certified by the Board of Elections on December 13, 1997.

to take a breath test pursuant to 9 CMC § 7106.

[3,4]Since both issues involve the question of whether there was sufficient evidence to support the convictions, we must view the evidence in a light most favorable to the prosecution and ascertain whether any reasonable trier of fact could have found each element of the crime charged beyond a reasonable doubt. *See Commonwealth v. Delos Reyes*, 4 N.M.I. 340, 342 (1996).

FACTUAL AND PROCEDURAL BACKGROUND

This appeal arises from a bench trial held on September 28, 1998. The testimony presented at the trial showed that on the night of April 22, 1998, a white sedan was driven off the roadway in the Fina Sisu area of Saipan near a curve by the intersection leading into the Riviera Hotel. The first persons to arrive at the scene of the accident were Mr. Carlito Deleon Guerrero (“Deleon Guerrero”) and a friend.² When they arrived at the scene, the car was already off the road with the engine off and the two tires on the driver’s side propped up in the air.

Deleon Guerrero approached the driver’s side of the car, looked through the window and saw a person in the driver’s seat, slumped over the steering wheel. He could not tell whether the driver was a male or female. Deleon Guerrero knocked on the car window, but received no response. When he tried to open the door, he found that it was locked. He then left the scene to call the police. Deleon Guerrero drove to a nearby poker place, about a minute’s drive away, and called 911. The officer who answered the call told Deleon Guerrero to wait at the accident scene. When Deleon Guerrero returned to the accident scene, however, the person in the driver’s seat was gone and the car locked. Deleon Guerrero left the scene before the police arrived.

Officer Charlie Patris testified that he and his partner Eric Mafnas were heading down the As Terlaje road, on routine traffic duty, when they received the call about an accident in the Fina Sisu area. Accordingly, they turned their car around and went back up the hill by the college, checking for a car accident. When they reached the curve beside the intersection to the Riviera Hotel, they found a car off the roadway, but did not see anyone in the area. Officer Patris noted that a tangantangan tree prevented

² The friend of Deleon Guerrero was not called as a witness at the bench trial.

the car from sliding down the slope. The officers tried to open the car, but found that it was locked. Officer Patris further testified that they touched the hood of the car and found it to be warm, indicating to them that the accident had occurred recently. Concerned that the road was slippery from rain earlier that night, they secured the area by placing a construction sign behind the car to prevent other cars from striking its rear.

Officers Eric David and Sandy Hambros, the traffic enforcement officers on duty that night, were by Beach Road, Chalan Lau Lau when they responded to the call about an accident in Fina Sisu. They overheard from Officers Patris and Mafnas that the area was secured and nobody was around. Officer Hambros testified that they arrived at the scene at 12:12 a.m., just eight minutes after receiving the call. When they arrived at the curve by the Riviera Hotel, they found a white sedan off the road in the boonie area. They did not find anyone at the scene and the doors were locked. They then left the scene to search for the driver. While driving south on As Lito Road, they came across Defendant Scragg walking along the road hitchhiking. Officer David testified that it would take approximately twenty minutes to walk from the scene of the accident to the area where they found Scragg, and that less than twenty minutes had passed since the officers responded to the accident call.

When the officers pulled their car over, Scragg asked if they could give him a ride home. As they were talking, Officer David detected a strong odor of alcohol from Scragg's exhaled breath. Scragg stated that he worked for JWS, a refrigeration company, and that he had been in an accident as a result of the road being slippery. Officer David testified that he recalled seeing a blue logo with the lettering JWS on the door of the car at the accident scene and that DPS Central had previously announced on the radio that JWS was the registered owner of the car. Scragg also admitted to the officers that the car by the curve was his, but that he did not report the accident because the Riviera Hotel was closed.

Officer David conducted a field sobriety test ("FST"), which consisted only of the coordination test because the road condition was not favorable for the balance test. Scragg did not perform well on the FST. Officer David also noticed that Scragg's eyes were bloodshot, his speech was slurred, and his face was pale. Further, Scragg was swaying while standing. After administering the FST by the roadside, the officers proceeded to take Scragg down to DPS Central in Susupe. En route, Officer Hambros asked Scragg about his car keys. Scragg responded that a spare key could be found located in a magnet box

underneath the car.

At DPS Central, Officer David conducted a second FST, including the balance test. Again, Scragg performed poorly. Officer David then asked Scragg to take a breathalyzer test, but Scragg refused. Scragg also refused to sign any of the forms presented and explained to him by Officer David. Scragg eventually signed the traffic citation when another officer explained the ramifications of not signing the citation.³

After the Prosecution rested its case, the defense made a motion for acquittal, which was denied. The defense rested without calling any witnesses. After closing arguments, the Superior Court found that it was “reasonable to conclude based upon circumstantial evidence the defendant was driving the car, was in actual physical control of the car when the car ran off the roadway. That defendant was further in actual physical control of the car when he was found to determine [sic] to be under the influence of alcohol.” Transcript of Proceedings, Excerpts of Record (“E.R.”) at 119. Accordingly, the court found Scragg guilty of violating 9 CMC § 7105 (driving under the influence of alcohol) and 9 CMC § 7106 (refusing to submit to a breath test). The court, however, acquitted Scragg of the charge of reckless driving because the Prosecution did not show Scragg drove the car with willful and wanton disregard for the safety of persons and property.

On October 8, 1998, the court sentenced Scragg to the minimum term of imprisonment and ordered him to pay a fine of \$500.00 for driving under the influence.⁴ Scragg timely appealed from his convictions.⁵

ANALYSIS

I. Whether There Was Evidence Beyond a Reasonable Doubt That Defendant Drove a

³ Specifically, the officer explained that if Scragg did not sign the citation, he would be detained at the station for a few more hours until a judge could be called, and that signing the citation was not an admission of guilt, but just a promise to appear in court to face the charges. E.R. at 99.

⁴ The court ordered Scragg to be imprisoned for a period of 30 days, all of which was to be suspended except the first three days with credit of eight hours already served. The court also ordered Scragg to attend alcohol information class and suspended his driver’s license for seven months.

⁵ On October 19, 1998, the Superior Court granted Scragg a stay of his sentence pending this appeal.

Car While Under the Influence of Alcohol, in Violation of 9 CMC § 7105.

[5]Section 7105 of Title 9 of the Commonwealth Code provides that “A person shall not drive, operate or be in actual physical control of any vehicle while . . . [u]nder the influence of alcohol.” 7 CMC § 7105(a)(2). In other words, to find a person guilty of DUI, the Prosecution must prove beyond a reasonable doubt that (1) the person drove, operated or was in actual physical control of (2) a vehicle (3) while under the influence of alcohol.

Scragg contends that the Prosecution did not present sufficient evidence to sustain a DUI conviction because the Prosecution failed to establish the first element, that Scragg was in fact “the driver.” In addition, Scragg argues that there was no evidence, direct or circumstantial, pinpointing the time the car was driven or when the accident occurred. We examine and reject each argument.

A. Identity of the Driver

[6,7]Generally, in a criminal prosecution, a material fact may be proved by the prosecution by inference, and such inference may be derived from circumstantial evidence to prove guilt beyond a reasonable doubt. *Commonwealth v. Oden*, 3 N.M.I. 186, 196 (1992). Some courts hold that the driving of an automobile while under the influence of alcohol may be proved by circumstantial evidence. *See Frye v. State*, 375 S.E.2d 101, 102 (Ga. Ct. App. 1988) (sufficient circumstantial evidence to uphold DUI conviction where no one saw defendant drive car and defendant denied being driver); *Jellison v. State*, 656 N.E.2d 532, 535 (Ind. Ct. App. 1995); *Barber v. State*, 509 S.E.2d 93, 94 (Ga. Ct. App. 1998). Moreover, observation of a defendant in the act of driving is not an indispensable prerequisite for a DUI conviction. *People v. Call*, 531 N.E.2d 451 (Ill. App. Ct. 1988).

Jurisdictions differ, however, when it comes to how much circumstantial evidence is necessary to sustain a conviction for DUI. Some jurisdictions hold that a “conviction based on circumstantial evidence cannot be sustained if the circumstances do not exclude every other reasonable hypothesis except that of the guilt of the accused.” *McCafferty v. State*, 748 S.W.2d 489, 491 (Tex. Ct. App. 1988) (where defendant was intoxicated when officer arrived at scene about one hour and twenty minutes after accident occurred, and where breath test was conducted over two hours after accident, evidence was insufficient to sustain conviction); *see also State v. Chapman*, 724 S.W.2d 713, 716 (Mo. Ct. App. 1987) (noting

that circumstantial evidence of guilt must be substantial evidence and must clearly point to defendant's guilt, precluding any reasonable hypothesis of guilt).

[8]The reasonable alternative hypothesis standard used in *McCafferty* and relied upon by Scragg, however, was subsequently rejected by Texas courts. *See Daricek v. State*, 875 S.W.2d 770, 773 (Tex. Ct. App. 1994) (declining to utilize *McCafferty* construct of excluding every other reasonable hypothesis in determining sufficiency of evidence); *see also Barton v. State*, 882 S.W.2d 456, 458 (Tex. Ct. App. 1994) (noting that Texas Court of Criminal Appeals has rejected "reasonable hypothesis" analysis as method of appellate review for evidentiary sufficiency in cases tried after November 6, 1991) (citing *Geesa v. State*, 820 S.W.2d 154, 162 (Tex. Crim. App. 1991)). Now, rather than looking to see whether all reasonable hypotheses other than guilt have been eliminated by the evidence, a reviewing court analyzes both direct and circumstantial evidence in the same way. *Id.* The reviewing court does not disregard reasonable inferences that can be drawn from the circumstantial evidence, but looks to the "totality of the circumstances surrounding the entire incident." *Id.* (citations omitted).

Here, the circumstantial evidence presented at trial showed the following:

Sometime around midnight, witness Deleon Guerrero saw a person slumped over the steering wheel of the car after the accident had occurred. The accident occurred late at night in the rural area of Fina Sisú. Officers Patris and his partner searched the road by the college as they drove to the accident scene. At the scene, Officer Patris felt the warm hood of the car, indicating to him that the accident occurred recently. Also responding to the call about the accident, Officers David and Hambros searched for the driver. Approximately twenty minutes after the accident was reported, they discovered Scragg walking along the road in the As Lito area, about a mile from the scene of the accident. The officers did not find any other persons walking on the roads. Scragg admitted to the officers that he was in an accident in Fina Sisú, that he owned the car and that he worked for JWS, the registered owner of the car. Scragg apologized for not reporting the accident and even explained how the accident happened. Scragg did not mention if anyone else had been with him in the car.

Thus, based upon the totality of the circumstances, a reasonable trier of facts could have found that Scragg was in fact the driver of the car.

B. Time of Driving

Scragg further contends that the Prosecution failed to prove that he was under the influence of alcohol at the exact time that the car was driven or slid off the road. He relies again on the case of *McCafferty v. State*, 748 S.W.2d 489, as support for his argument that the prosecution must relate his

intoxicated condition back to the time of driving. *Id.* at 491 (state failed to connect results of defendant's breath test taken at least two hours after accident to defendant's condition at time of driving). In response, the Prosecution argues that it is only a minority viewpoint that an alcohol test must relate back to the time of driving. The prosecution cites cases indicating that the majority view is that the inability to relate back to the time of driving only goes to the weight of the evidence. *See Haas v. State*, 597 So.2d 770 (Fla. 1992); *State v. Kubik*, 456 N.W.2d 487 (Neb. 1990); *State v. Taylor*, 566 A.2d 172 (N.H. 1989); *Commonwealth v. Speights*, 509 A.2d 1263 (Pa. Super. Ct. 1986), *appeal denied*, 535 A.2d 83 (Pa. Super. Ct. 1987).

[9]The authorities submitted by the parties are not directly on point with the facts of this case because at issue in each of the cases cited was whether it is necessary to relate back a blood alcohol or breathalyzer test to the time of driving. In this case, no blood alcohol or breathalyzer test was administered to Scragg. Scragg performed two field sobriety tests, but refused to submit to a breathalyzer test. Thus, we need not determine whether the results of a chemical sobriety test must relate back to the time of driving. The real inquiry, then, is simply whether the evidence was sufficient to prove that Scragg was under the influence of alcohol at the time he drove the car. From the facts presented at trial, we conclude that it was.

[10]The evidence showed that Scragg's car was found on the side of the road around midnight. Officer Patris testified that he felt the hood of the car shortly thereafter and found it to be pretty warm, indicating to him that the accident had occurred recently. Within twenty minutes after receiving the call about the accident, Officers David and Hambros found Scragg walking along the road about a twenty minute's walk away from the accident scene. Scragg admitted being in the accident, but did not mention anyone else being with him in the car. Based upon this circumstantial evidence, a reasonable trier of fact could have found that Scragg had driven the car shortly before the officers discovered him walking on the road. Scragg's contention that a warm hood in tropical Saipan is not indicative of a recently driven car might have merit had the accident occurred during a sunny day. However, the accident here occurred at nighttime after it had been raining. Thus, the trial judge could have reasonably concluded that the hood was warm due to having been recently driven.

[11]Accordingly, evidence of Scragg's intoxication gathered by the police within a short time after

the accident was relevant to establishing that Scragg was intoxicated at the time he drove the car off the road. Such evidence consisted of officers' testimony that Scragg failed two field sobriety tests, and Officer David's testimony that Scragg's eyes were bloodshot, his speech slurred, his face pale and that he swayed while standing. We find this evidence was sufficient to support the Superior Court's conclusion that Scragg was in fact under the influence of alcohol at the time he drove the car. *See Commonwealth v. Palacios*, 4 N.M.I. 330, 333 (1996) (noting that defendant's failure to pass field sobriety tests, combined with other facts such as officer's observation of defendant's flushed complexion, bloodshot eyes and slurred speech, can be sufficient factual basis to support conviction of driving under influence of alcohol) (citing *Commonwealth v. Peters*, 1 N.M.I. 466, 476-77 (1991)).

II. Whether There Was Sufficient Evidence to Support Defendant's Conviction for Refusing to Take a Breath Test Pursuant to 9 CMC § 7106(a)

[12]In this Commonwealth, the following law applies to all operators of motor vehicles:

Any person who operates a motor vehicle upon the highways within the Commonwealth shall be deemed to have given his or her consent . . . to a test of his or her breath; . . . The test shall be administered at the request of a police officer *having reasonable grounds* to believe the person operating or in actual physical control of a motor vehicle upon the highways is under the influence of alcohol or drugs

9 CMC § 7106(a) (emphasis added). This is commonly referred to as the implied consent law.

Employing the same arguments that there was no evidence that he drove the car while under the influence of alcohol, Scragg contends that a police officer could not have had reasonable grounds to form a belief that he was in actual physical control of a car while under the influence.

[13,14]"Reasonable grounds" are established where "a reasonable person in the position of the officer viewing the facts and circumstances as they appeared at trial could have concluded that the motorist had operated the vehicle while under the influence of alcohol." *Menosky v. Commonwealth*, 550 A.2d 1372, 1374 (Pa. Commw. Ct. 1988). Moreover, for reasonable grounds to exist, the police officer need not be correct in his belief that the motorist had been driving while under the influence. *Incarvite v. Commonwealth*, 732 A.2d 39, 41 (Pa. Commw. Ct. 1999).

In the case at bar, given that Scragg admitted he owned the car and had just been in an accident, along with Officer David's observations that Scragg smelled of alcohol and his eyes were bloodshot and

his speech slurred, a reasonable person in the officer's position could have concluded that Scragg had been driving the car while under the influence. Even if Officer David had not been correct in his belief that Scragg had been driving the car, reasonable grounds for believing so existed as indicated by the facts above. Accordingly, we find that the facts and circumstances were sufficient to provide an officer with the reasonable grounds required by 9 CMC § 7106(a) and Scragg's conviction for refusal to take a breath test was therefore proper.

CONCLUSION

For the foregoing reasons, we find that there was sufficient evidence to sustain the trial court's findings that Defendant Scragg was in fact driving a car while under the influence of alcohol and, as such, the officers did have reasonable grounds to administer a breath test which the Defendant refused. Accordingly, Defendant's convictions for driving under the influence of alcohol and for refusal to take a breath test are **AFFIRMED**.

DATED this 9th day of March, 2000.

/s/ Miguel S. Demapan
MIGUEL S. DEMAPAN, Chief Justice

/s/ Alexandro C. Castro
ALEXANDRO C. CASTRO, Associate Justice

/s/ David A. Wiseman
DAVID A. WISEMAN, Special Judge