

Commonwealth Of Kentucky

Court of Appeals

NO. 2001-CA-002711-MR

GLORIA HARRIS

APPELLANT

v. APPEAL FROM MCCRACKEN CIRCUIT COURT
HONORABLE R. JEFFREY HINES, JUDGE
ACTION NO. 00-CR-00187

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION

AFFIRMING

** ** * * *

BEFORE: BUCKINGHAM, McANULTY, AND SCHRODER, JUDGES.

McANULTY, JUDGE. Appellant was convicted by a McCracken Circuit Court jury of operating a motor vehicle under the influence, second offense, resisting arrest, and criminal mischief in the third degree. She appeals to this Court as a matter of right, and argues that there was insufficient evidence to sustain her convictions for driving under the influence and criminal mischief. We have reviewed the record, and we affirm.

Appellant first argues that there was insufficient evidence to convict her of driving under the influence because her blood alcohol level reading was .079 - below the applicable "per se" level of 0.10 intoxication at the time of the offense in Kentucky Revised Statutes (KRS) 189A.010. Appellant alleges that because there was no other convincing evidence to show that she was driving while intoxicated she should have been granted a directed verdict. The appellate standard of review for a directed verdict is, if under the evidence as a whole it would not be clearly unreasonable for a jury to find the defendant guilty, she is not entitled to a directed verdict of acquittal. Commonwealth v. Sawhill, Ky., 660 S.W.2d 3, 5 (1983).

We agree with the Commonwealth that it produced sufficient evidence to support the jury verdict that appellant was operating a motor vehicle while under the influence of alcohol. Appellant admitted to the officer that she had been drinking. She asserted that she was on medication. The officers testified that appellant failed to complete two field sobriety tests because she said she could not do them. She began two field sobriety tests and got about a third of the way through them before stopping. We conclude that there was sufficient evidence for the jury to conclude that appellant was under the influence.

Appellant argues that the Commonwealth must show evidence of impaired driving ability when it charges a defendant with driving under the influence of alcohol or "any other substance which may impair one's driving ability," as in this case. Bridges v. Commonwealth, Ky., 845 S.W.2d 541, 543 (1993) (concurring opinion). Appellant contends the Commonwealth failed to show impaired driving ability. We disagree. The arresting officer was able to point to evidence of impaired driving ability when she testified that she saw, and heard, appellant drive up onto a curb before she pulled her over. In addition, appellant was unable to complete the field sobriety tests. Thus, there was evidence from which the jury could conclude that appellant's ability to drive was impaired. The trial court properly denied the motion for directed verdict.

Next, appellant argues that there was insufficient evidence of criminal mischief in the third degree when she kicked the windows in the police cruiser. Appellant argues that no evidence was presented that she defaced, destroyed or damaged the property, as required by KRS 512.040.

The evidence presented at trial consisted of an officer's testimony that appellant kicked at the window in the cruiser and pushed the window out of the track. We agree with the Commonwealth that testimonial evidence was sufficient to prove that the window was damaged without having to provide a

photograph of the window. We also do not believe that the Commonwealth had to establish what was required to repair the window. The statute for criminal mischief in the third degree, KRS 512.040, only requires the Commonwealth to show that property was damaged, not the extent or cost of it. We believe the evidence was sufficient to convince a reasonable juror that appellant was guilty of criminal mischief in the third degree. Therefore, we affirm the trial court's denial of the directed verdict.

For the foregoing reasons, we affirm appellant's convictions in the McCracken Circuit Court.

ALL CONCUR.

BRIEF FOR APPELLANT:

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