THE STATE OF NEW HAMPSHIRE

SUPREME COURT

In Case No. 2007-0710, State of New Hampshire v. Brendan Cate, the court on November 19, 2008, issued the following order:

The defendant, Brendan A. Cate, appeals his convictions for two offenses: reckless driving and driving under the influence of drugs or liquor. See RSA 265:79 (Supp. 2008); RSA 265-A:2 (Supp. 2008). The defendant argues that because the evidence was entirely circumstantial and did not exclude all rational conclusions except guilt, it was insufficient to prove guilt beyond a reasonable doubt. We affirm.

To prevail upon his challenge to the sufficiency of the evidence, the defendant must prove that no rational trier of fact, viewing all of the evidence and all reasonable inferences from it in the light most favorable to the State, could have found guilt beyond a reasonable doubt. State v. MacDonald, 156 N.H. 803, 804 (2008). When the evidence is solely circumstantial, it must exclude all rational conclusions except guilt. Id. We will assume, without deciding, that the State presented only circumstantial evidence. Under this standard, however, we still consider the evidence in the light most favorable to the State and examine each evidentiary item in context, not in isolation. Id.

The defendant first argues that the State failed to present sufficient evidence to prove that he drove while under the influence of intoxicating liquor or any controlled drug because it did not produce results of breath, blood or urine tests, or any evidence "derived from traditional field sobriety tests." In addition, he argues that there was "substantial evidence offered at trial to actually show that [he] was not impaired when he drove home." To support this conclusion, he claims that "[t]hird party witnesses specifically testified that [the defendant] was not impaired at all when he left the Stinson Mountain Grill."

The defendant testified that due to injuries, surgery and arthritis, he walks with a limp and "trips and falls a lot." He claimed that when he arrived home after leaving the grill, he felt lightheaded and that he does not remember anything that occurred after that until 2:00 a.m. two days later. He claimed he had a "dent" and a "big lump" on his head. The defendant attributed his symptoms of intoxication to his alleged head injury. He argues that we must reverse because the trial court failed to address other "rational conclusions drawn from the circumstantial evidence," such as a medical condition or injury. We disagree.

The defendant's purported alternative rational conclusion that a head injury caused his symptoms of intoxication is unsupported in the record. No witnesses observed evidence of a head injury. The defendant never sought medical attention for lightheadedness. According to Officer Brett Miller, when initially questioned, the defendant informed him of an injured back and sore feet, but made no mention of a head injury. The State presented evidence of the defendant's reckless driving, his admitted alcohol consumption, disorientation, slurred speech, falling and crawling, access to alcohol and prescription drugs, and untruthfulness. In addition, two witnesses including a police officer, testified that they believed the defendant was intoxicated.

Nor does the record support the defendant's claims that third party witnesses testified that he was not impaired at all when he left the grill. The only person at trial other than Miller and Russell Blodgett to testify about the defendant's state of intoxication was the grill's bartender. When asked if she saw anything which might make her think the defendant was impaired by alcohol, she answered "oh no," and denied noticing any signs of intoxication such as disorientation or slurred speech. This testimony falls short of affirmatively stating that the defendant was not impaired. More importantly, the trial court had substantial latitude in determining the credibility of witnesses and was free to accept or reject her testimony. See State v. Flynn, 151 N.H. 378, 382 (2004).

Accordingly, having examined each evidentiary item in the context of all the evidence, and viewing the evidence in the light most favorable to the State, we decide that the evidence on the record excludes all rational conclusions except that the defendant was driving while intoxicated.

The defendant next argues the State failed to present sufficient evidence to prove that he was guilty of reckless driving. He does not dispute the testimony of three witnesses who said that they saw a blue car recklessly speed down School Street, a short distance from the grill, where the defendant had consumed alcohol. He also acknowledges that he had to make an "instinctive" evasive maneuver to avoid hitting two children while driving down School Street. The defendant contends, however, that the State presented no witnesses identifying him as the person actually operating the car when it sped past them on School Street. He argues that another rational conclusion is that the speeding car was "some other blue car." Again, we disagree.

At trial, the defendant admitted to leaving the grill at approximately 4:00 p.m. and driving down School Street. Blodgett identified the car in the defendant's driveway as "the car" he saw speeding past his house on School Street at approximately 4:30 p.m. Two other witnesses saw a blue car speeding on School Street between about 3:40 p.m. and 4:30 p.m. The State presented testimony from two witnesses showing that the defendant wanted to make

amends with Blodgett when confronted about his driving. In addition, Officer Brett Miller testified that shortly after 5:00 p.m. that evening, he determined that the defendant's car had recently been driven.

The defendant further contends that it was "mechanically impossible" for his car to be traveling "at least 50 [mph]" as Blodgett testified because Blodgett's house is only "a couple of hundred feet" from the grill and a car cannot accelerate quickly enough to reach fifty miles per hour in such a short distance. Although, on appeal, he cites a mathematical formula to support this contention, this evidence was not presented at trial. We therefore will not consider it. See Lake v. Sullivan, 145 N.H. 713, 718 (2001).

Having examined each evidentiary item in the context of all the evidence, and in the light most favorable to the State, we conclude that based upon the evidence, all rational conclusions, other than guilt of reckless driving, have been excluded.

To the extent that the defendant presents other arguments in his notice of appeal, he has not fully briefed these arguments and we decline to consider them. See In re James N., ___ N.H. ___, ___ (decided Oct. 8, 2008) (because issues not adequately briefed, court declined to address them).

Affirmed.

DALIANIS, DUGGAN and GALWAY, JJ., concurred.

Eileen Fox,
Clerk