

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

LC2012-000490-001 DT

02/14/2013

THE HON. CRANE MCCLENNEN

CLERK OF THE COURT
J. Eaton
Deputy

STATE OF ARIZONA

KENNETH M FLINT

v.

SCOTT ROBERT JOHNSON (001)

TODD K COOLIDGE

REMAND DESK-LCA-CCC
SCOTTSDALE MUNICIPAL COURT

RECORD APPEAL RULING / REMAND

Lower Court Case Number M-751-TR-2011-007093.

Defendant-Appellant Scott Robert Johnson (Defendant) was convicted in Scottsdale Municipal Court of driving under the influence. Defendant contends the State did not present sufficient evidence that Defendant's blood was drawn within 2 hours of his driving. For the following reasons, this Court affirms the judgment and sentence imposed.

I. FACTUAL BACKGROUND.

On March 20, 2011, Defendant was cited for driving under the influence, A.R.S. § 28-1381(A)(1) & (A)(2); driving under the extreme influence, A.R.S. § 28-1382(A)(1); failure to control speed to avoid a collision, A.R.S. § 28-701(A); and unsafe backing, A.R.S. § 28-891(A). At the trial in this matter, Julie Vansee testified she was with Edward Appling celebrating his birthday, beginning on March 19, 2011, at 9:00 p.m. going to a car show, and continuing into March 20, 2011, in Scottsdale at the Club Afterlife. (R.T. of Feb. 6, 2012, at 16-17, 25.) They left the Club Afterlife some time "before 3:00 a.m." in Ed's vehicle with Ed driving. (*Id.* at 17, 25.) While they were stopped at a traffic light, another vehicle backed into them. (*Id.* at 19.) She identified Defendant as the driver of that vehicle. (*Id.* at 21.) Once the other vehicle hit them, Ed moved his vehicle forward, then they got out of the vehicle and called the police, who arrived "fairly quickly." (*Id.* at 20, 39.) On cross-examination, she said she had not seen Ed drink any alcohol from 9:00 p.m. when the car show started until 2:00 a.m. (*Id.* at 25.) She also said there was another person in the vehicle that hit them, apparently named Lori Breitling, and that woman said she was the owner of the vehicle that hit them. (*Id.* at 30.)

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Lori Breitling testified she was with Defendant the evening of March 19, 2011, into the morning hours of March 20, 2011. (R.T. of Feb. 7, 2012, at 283, 285.) They were in a bar in Scottsdale and left at closing time. (*Id.* at 285.) They walked in the direction of her car, and left with Defendant driving. (*Id.* at 285.)

Officer Tyler Thomas testified he received a dispatch on March 20, 2011, at 2:01 a.m. advising of a collision. (R.T. of Feb. 6, 2012, at 40–42.) He arrived at the location about 2 minutes later. (*Id.* at 41.) Upon his arrival there, he determined a collision had just occurred. (*Id.* at 45.) When he questioned Defendant, he said he was backing the vehicle and had not seen the other vehicle he hit. (*Id.* at 48.) He said he had been at the Loco Patron bar/restaurant that was about 100 feet away from where the collision occurred. (*Id.* at 29.) On cross-examination, Defendant's attorney asked Officer Thomas what is significant about 2:00 a.m. in that area, and Officer Thomas said that was when the bars stopped serving alcohol. (*Id.* at 54.) Officer Thomas acknowledged he spoke to Julie Vansee, and she said the collision "just happened." (*Id.* at 54–55.)

Officer Brian Steel testified he received a dispatch on March 20, 2011, at 2:01 a.m. that reported a collision, and he arrived within 2 or 3 minutes. (R.T. of Feb. 6, 2012, at 94, 96–98.) He identified Defendant as the driver of the vehicle that caused the collision. (*Id.* at 100.) He said Defendant's blood was drawn at 2:53 a.m. (*Id.* at 138.) Later testimony established Defendant's BAC was 0.175. (*Id.* at 203, 226–27, 262–63.)

After the State rested, Defendant's attorney made a motion for judgment of acquittal contending the State had not presented evidence that Defendant's blood was tested within 2 hours of his driving. (R.T. of Feb. 7, 2012, at 310–11.) After hearing arguments of counsel, the trial court denied that motion. (*Id.* at 320–21.) The jurors later found Defendant guilty of all three DUI charges. (*Id.* at 326–27.) On March 6, 2012, the trial court sentenced Defendant. On that same day, Defendant filed a timely notice of appeal. This Court has jurisdiction pursuant to ARIZONA CONSTITUTION Art. 6, § 16, and A.R.S. § 12–124(A).

II. ISSUE: DID THE STATE PRESENT SUFFICIENT EVIDENCE THAT DEFENDANT'S BLOOD
WAS DRAWN WITHIN 2 HOURS OF HIS DRIVING.

Defendant contends the State did not present sufficient evidence that Defendant's blood was drawn within 2 hours of his driving. In addressing the issue of the sufficiency of the evidence, the Arizona Supreme Court has said the following:

We review a sufficiency of the evidence claim by determining "whether substantial evidence supports the jury's finding, viewing the facts in the light most favorable to sustaining the jury verdict." Substantial evidence is proof that "reasonable persons could accept as adequate . . . to support a conclusion of defendant's guilt beyond a reasonable doubt." We resolve any conflicting evidence "in favor of sustaining the verdict."

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State v. Bearup, 221 Ariz. 163, 211 P.3d 684, ¶ 16 (2009) (citations omitted). When considering whether a verdict is contrary to the evidence, this court does not consider whether it would reach the same conclusion as the jurors, but whether there is a complete absence of probative facts to support their conclusion. *State v. Mauro*, 159 Ariz. 186, 206, 766 P.2d 59, 79 (1988). In review the record in this case, this Court concludes there was not “a complete absence of probative facts to support [the jurors’] conclusion. The trial court therefore properly denied Defendant’s Motion for Judgment of Acquittal.

III. CONCLUSION.

Based on the foregoing, this Court concludes the trial court therefore properly denied Defendant’s Motion for Judgment of Acquittal.

IT IS THEREFORE ORDERED affirming the judgment and sentence of the Scottsdale Municipal Court.

IT IS FURTHER ORDERED remanding this matter to the Scottsdale Municipal Court for all further appropriate proceedings.

IT IS FURTHER ORDERED signing this minute entry as a formal Order of the Court.

/s/ Crane McClennen
THE HON. CRANE MCCLENNEN
JUDGE OF THE SUPERIOR COURT

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