COURT OF APPEALS
DECISION
DATED AND FILED

March 3, 2004

Cornelia G. Clark
Clerk of Court of Appeals

Appeal No. 03-2533-CR **Cir. Ct. No. 02CM000466**

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT II

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

RONALD PRESSLEY,

DEFENDANT-APPELLANT.

APPEAL from judgments of the circuit court for Kenosha County: WILBUR W. WARREN, Judge. *Affirmed*.

¶1 BROWN, J.[1] Ronald Pressley appeals from judgments of conviction for operating a motor vehicle while intoxicated third offense, contrary to WIS. STAT. § 346.63(1)(a), and obstructing an officer, contrary to WIS. STAT. § 946.61.

[1] This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(c) (2001-02). All references to the Wisconsin Statutes are to the 2001-02 version unless otherwise noted.

Pressley submits that the evidence was insufficient to support the guilty verdict. We disagree and affirm.

¶2 The State called Kenosha County Deputy Jeffrey Bliss to testify during Pressly's OWI trial. Bliss testified that while in his squad car on the night of March 2, 2002, he observed a vehicle exit the roadway and slide into a ditch and then onto a field. Bliss further stated that he was approximately one hundred yards away from the occurrence. He also testified that it had been snowing heavily prior to his observation and that the roadway was completely covered with snow. He testified that there was sufficient light for him to see the accident because of the fresh snow, moonlight and illumination from the squad car's lights. Bliss further testified that he saw Pressley exit from the driver's side of the car. He testified that he could see hundreds of yards into the open field near the ditch, but he did not see anyone other than Pressley in the area of the vehicle. When Bliss approached the vehicle and had contact with Pressley, Pressley claimed that the driver of the vehicle had fled through a field near the road. Bliss stated that when he checked around the car for footprints in the fresh snow, the only sets of footprints he found were from Pressley and from the deputy himself.

¶3 Contrary to the testimony of Bliss, Pressley testified that after leaving the pub, the Brat Stop, that night, he entered his vehicle on the passenger side. He further testified that his friend, Mark Burns, was the driver of the automobile and that after the automobile slid into the ditch, Burns exited the vehicle and fled the scene. To bolster the credibility of his testimony, Pressley called Lawana Patterson, a woman he had approached while at the Brat Stop, and Gary Leineweber, a private investigator, to testify on his behalf. Patterson testified that on the night of March 2, she observed Pressley leave the Brat Stop and enter a vehicle on the passenger side. Leineweber testified that the evening

before the trial, he had taken photographs of the scene where he believed the accident had occurred based on what Pressley had told him. His testimony concerned the vantage point of Bliss at the time he witnessed the accident. The jury subsequently found Pressley guilty and he appeals.

¶4 Pressley challenges the jury verdict, arguing that the evidence was insufficient to establish that he was the driver/operator of the vehicle involved in the case as required by WIS. STAT. § 346.63(1)(a). *See* WIS-JI CRIMINAL 2660 (stating that "[t]he first element requires that the defendant [drove a motor vehicle on a highway. 'Drive' means the exercise of physical control over the speed and direction of a motor vehicle while it is in motion.]" (footnotes omitted)). In reviewing the sufficiency of the evidence to support a conviction, an appellate court may not substitute its judgment for that of the trier of fact, unless the evidence, viewed most favorably to the State and the conviction, is so lacking in probative value and force that no trier of fact, acting reasonably, could have found guilt beyond a reasonable doubt. ***State v. Poellinger***, 153 Wis. 2d 493, 507, 451 N.W.2d 752 (1990). If any possibility exists that the trier of fact could have drawn the appropriate inferences from the evidence adduced at trial to find the requisite guilt, an appellate court may not overturn a verdict even if it believes that the trier of fact should not have found guilt based on the evidence before it. ***Id.*** Where there are inconsistencies in the testimony of the witnesses, it is the trier of fact's duty to determine the weight and credibility of the testimony. *See* ***Thomas v. State***, 92 Wis. 2d 372, 381-82, 284 N.W.2d 917 (1979). An appellate court will substitute its judgment for that of the trier of fact when the fact-finder relied on evidence that was "inherently or patently incredible—that kind of evidence which conflicts with the laws of nature or with fully-established or conceded facts." ***State v. Tarantino***, 157 Wis. 2d 199, 218, 458 N.W.2d 582 (Ct. App. 1990).

¶5 Here, the testimony of Bliss was sufficient for a reasonable jury to find Pressley guilty of OWI. The jury obviously found his testimony regarding his observation of the scene more credible than Pressley's version of the events and more credible than the testimony of Patterson and Leineweber. Bliss's testimony established that he was in a position to observe, and did observe, Pressley's car being driven on a highway, Pressley exiting the car from the driver's side, the absence of any other person either inside the car or exiting the car, and the absence of footprints around the car other than his own footprints and those of Pressley. Nothing in Bliss's testimony was "inherently or patently incredible." *See* ***id***. Therefore, this court affirms.

By the Court.—Judgments affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)4.