

IN THE COURT OF APPEALS 05/21/96

OF THE

STATE OF MISSISSIPPI

NO. 93-CA-00281 COA

HIRAM D. BURROWES

APPELLANT

v.

CITY OF WATER VALLEY, MISSISSIPPI

APPELLEE

THIS OPINION IS NOT DESIGNATED FOR PUBLICATION AND
MAY NOT BE CITED, PURSUANT TO M.R.A.P. 35-B

TRIAL JUDGE: HON. ANDREW C. BAKER

COURT FROM WHICH APPEALED: YALOBUSHA COUNTY CIRCUIT COURT

ATTORNEY FOR APPELLANT:

DAVID CLAY VANDERBURG

ATTORNEY FOR APPELLEE:

JOHN J. CROW JR.

DISTRICT ATTORNEY: MURRAY L. WILLIAMS

NATURE OF THE CASE: DRIVING UNDER THE INFLUENCE OF INTOXICATING LIQUOR

TRIAL COURT DISPOSITION: FINED THE SUM OF \$137.00 FOR THE UNLAWFUL
POSSESSION OF BEER, \$53.00 FOR RECKLESS DRIVING, AND \$301.00 FOR DRIVING
UNDER THE INFLUENCE.

BEFORE FRAISER P.J., BARBER, AND DIAZ, JJ.

DIAZ, J., FOR THE COURT:

Hiram D. Burrowes (Burrowes) was tried and convicted of driving under the influence of alcohol in violation of Miss. Code Ann. § 63-11-30 (1972). He was fined the sum of \$137.00 for the unlawful possession of beer, \$53.00 for reckless driving, and \$301.00 for driving under the influence. Burrowes was initially convicted in Water Valley Municipal Court. He appealed to the Circuit Court of Yalobusha County where the judge affirmed his conviction. Burrowes asserts on appeal that the lower court erred in failing to grant him a directed Overdict because (1) the city failed to prove the

charge on the ticket, (2) there was a lack of proper documentary evidence, (3) the officer failed to advise Burrowes of his right to alternative blood testing, and (4) the city failed to meet its burden of proof. Finding no reversible error, we affirm.

FACTS

On March 30, 1991, William Sheffield and Marshall Jackson, officers with the Water Valley Police Department, were conducting a routine roadblock. Burrowes was on his way home when he approached the roadblock. The officers testified that Burrowes was driving in the middle of the road, so they flashed their flashlights at him in an attempt to stop him. They further testified that not only did Burrowes fail to stop, but that Sergeant Sheffield had to step out of the way in order to avoid being hit by Burrowes' vehicle. Officer Jackson testified that Burrowes finally stopped about three hundred yards past the roadblock when the officers started pursuing him.

Burrowes admitted that he had about three or four beers, and that he was returning home from a party. The officers testified that they smelled alcohol on Burrowes' breath. They brought Burrowes to the police station where they administered a breathalyzer test. The test results indicated that Burrowes' blood-alcohol level registered .16%. At that point, he was arrested, and the officers searched his vehicle. They found one can of beer beneath the driver's seat.

DISCUSSION

THE CHARGE ON THE TICKET

Burrowes' first argument is that the city did not properly apprise him of the charges he faced because the officer checked the first box on the ticket, but did not check the third box on the ticket. The first box states, "Under the influence of intoxicating liquor in violation of section 63-11-30 (1)(a)." The third box states, "Having ten one-hundredths percent (.10%) or more by weight volume of alcohol in the blood, to-wit: (.16% inserted by the officer) in violation of section 63-11-30(1)(c)." Burrowes argues that because the officer failed to check the box, despite the fact that they filled in the blank with his blood alcohol content, he was not properly charged. Because only the first box on the ticket

was checked, he argues that the only charge he was properly apprised of was that he was under the influence of intoxicating liquor, and not the implied consent law. Furthermore, he asserts that even if he was properly charged, the officers still failed to administer the proper tests to determine his blood-alcohol content, and therefore, the lower court should have granted a directed verdict in his favor. We fail to see any merit to this argument.

Turning to the controlling code section, 63-9-21 requires only that the ticket include information which will constitute a complaint charging the offense for which the ticket was issued. Miss. Code Ann. § 63-9-21(3)(c) (Supp. 1995). We find that the ticket Burrowes received sufficiently complied with the requirements under section 63-9-21 of the Mississippi Code. The information on the ticket gave him sufficient notice of the charge he was facing as contemplated under the code section. Even though the third box was not checked per se, the arresting officer filled in the blank which indicated that Burrowes' blood-alcohol content was higher than the legally permitted level to drive. The ticket clearly indicates that Burrowes' blood- alcohol content was .16%.

SOBRIETY TESTING

Burrowes also argues that he was not given proper sobriety tests at the site of the incident. We are unable to find any authority which states that the officer must administer the sobriety test at the site of the incident. As a matter of fact, the State requires by law that the sobriety test not be administered to any person within fifteen minutes of consumption of any substance. Miss. Code Ann. § 62-11-5 (Supp. 1995). Police procedure requires that the person be observed for twenty minutes before the test may be administered. *Fisher v. City of Eupora*, 587 So. 2d 878, 882 (Miss. 1991).

In the case at bar, the officers testified that they set up the roadblock around 9:00 p.m. that night. Sergeant Sheffield testified that they checked several cars before Burrowes came upon the roadblock just after 9:00 p.m. After pulling Burrowes over, Officer Marshall testified that since they were required to wait twenty minutes before administering the test to Burrowes, they brought him into the Sheriff's office and read Burrowes his rights concerning taking the breathalyzer test. After Burrowes consented to taking the test, Officer Marshall administered the test. Burrowes blood-alcohol level registered at .16%. The test was conducted at 9:36 p.m. that night.

Burrowes also argues that the officers failed to inform him that he could have had additional tests administered in order to determine the amount of alcohol in his blood, such as urine or blood tests. Section 63-11-13 of the Mississippi Code states that the accused may have additional tests done at his own expense; however, "[t]he failure or inability to obtain an additional test . . . shall not preclude the admissibility in evidence of the test taken at the direction of a law enforcement officer." Miss. Code Ann. § 63-11-13 (Supp. 1995). From the language of the statute, we find no merit to this argument.

BEST EVIDENCE RULE

Burrowes' second contention is that the lower court should have granted a directed verdict in his favor when the judge allowed the city to introduce a copy of the results of the breathalyzer test instead of the original. Rule 1002 of the Mississippi Rules of Evidence requires the original writing to be introduced into evidence when the content of the writing is at issue. M.R.E. 1002. However, Rule 1003 allows the admissibility of a copy of the original unless either a genuine question is raised as to

the authenticity of the original, or if under the circumstances, it would be unfair to admit the duplicate in place of the original. M.R.E. 1003.

Burrowes does not argue how either of the above exceptions apply here. He merely states that it is incumbent upon the city to produce the originals. We have reviewed the record and are satisfied that it was proper to admit the copy of the results in this instance. Both the City Clerk for the City of Water Valley and the Circuit Court Clerk for Yalobusha County testified at trial. The city clerk testified that the original ticket along with the results of the breathalyzer test were introduced into evidence in municipal court. When asked where the originals were, she stated that after a diligent search, she was unable to locate them, and that she only had the copies in her file. The Circuit Court Clerk, Mary Sue Stevens, testified that although the city clerk usually brought the originals over to her, she was unable to locate the originals after a diligent search. Ms. Stevens testified that she only had the three copies of the documents in her files. "The best evidence rule only expresses a preference for original documents, but does not preclude the admission of secondary evidence." *Watson v. State*, 465 So. 2d 1091, 1092 (Miss. 1985). Since no question has been raised about the authenticity of the originals, and the city has made a diligent search for the originals, we do not think that there was any unfairness as a result of the admission of the duplicates in this instance.

CONCLUSION

We find that Burrowes was properly apprised of the charges that he faced and that the police officers followed proper procedures by waiting twenty minutes before administering the breathalyzer

test. We also find that the trial court did not err in admitting a copy of the results of the breathalyzer test. Therefore, we affirm the judgment of the lower court.

THE JUDGMENT OF (1)UNLAWFUL POSSESSION OF BEER AND FINE OF \$137.00; (2) RECKLESS DRIVING AND FINE OF \$53.00; AND (3) DRIVING UNDER THE INFLUENCE OF INTOXICATING LIQUOR AND FINE OF \$301.00 IN THE YALOBUSHA COUNTY CIRCUIT COURT IS AFFIRMED. COSTS OF THIS APPEAL ARE TAXED TO THE APPELLANT.

FRAISER, C.J., BRIDGES AND THOMAS, P.JJ., BARBER, COLEMAN, KING, McMILLIN, PAYNE, AND SOUTHWICK, JJ., CONCUR.