

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

STATE OF MISSOURI,

Respondent,

v.

BILLY JACK HATFIELD,

Appellant.

DOCKET NUMBER WD72468

Date: August 30, 2011

Appeal from:
Cass County Circuit Court
The Honorable William B. Collins, Judge

Appellate Judges:
Division One: Gary D. Witt, P.J., James E. Welsh and Alok Ahuja, JJ.

Attorneys:
Emmett D. Queener, Columbia, MO, for appellant.
Shaun J. Mackelprang, Robert J. Bartholomew, Jefferson City, MO, for respondent.

MISSOURI APPELLATE COURT OPINION SUMMARY

COURT OF APPEALS -- WESTERN DISTRICT

STATE OF MISSOURI

v.

BILLY JACK HATFIELD,

WD72468

Respondent,

Appellant.

Cass County

Deputy Jacob Shanks of the Cass County Sheriff's Department was dispatched to an accident at 814 Ward Road in Raymore at approximately 11:00 a.m. on September 10, 2008. When he arrived at the scene, Deputy Shanks observed a Chevrolet Camaro parked in the driveway of a home with a damaged front end, rut marks in a ditch next to the vehicle, a damaged fence near the car, and Hatfield standing outside the vehicle. No one else was present at the scene. Deputy Shanks asked Hatfield what happened, and he responded that "I lost it making the turn." Deputy Shanks observed multiple indicators that Hatfield was intoxicated, including a strong odor of alcohol on his breath, slurred speech, and balance problems. When Deputy Shanks asked Hatfield for his driver's license, Hatfield responded that it was revoked. Deputy Shanks confirmed the revocation and arrested Hatfield for driving while revoked and suspicion of driving while intoxicated.

Deputy Shanks transported Hatfield to the Cass County Sheriff's Office. After arriving at the station, Hatfield refused to perform the standard field sobriety tests. Deputy Shanks also read Hatfield the Missouri Implied Consent Law which required him to provide a sample of his breath, blood, or urine, or otherwise face a one year driver's license revocation. Hatfield refused to provide the breath sample which Deputy Shanks requested.

The jury found Hatfield guilty of DWI and of driving while revoked. The court sentenced him to two concurrent sentences of four years' imprisonment. This appeal follows.

CONVICTION AND SENTENCE FOR DRIVING WHILE INTOXICATED REVERSED.

Division One holds:

On appeal Hatfield does not challenge his conviction for driving while revoked, but argues only that the evidence was insufficient to convict him of DWI. We agree.

In a DWI prosecution the State must prove, beyond a reasonable doubt, that the defendant was driving *while* intoxicated. Where the operation of a motor vehicle is temporally separated from the defendant's observed intoxication at the time of arrest, the State must present evidence concerning the length of the interval between the defendant's driving and his observed intoxication. Prior decisions have held that a DWI conviction cannot be sustained where the State fails to present evidence to support the inference that the defendant's intoxication was observed within a reasonable period of time following the defendant's operation of a motor vehicle, and that the defendant did not become intoxicated in the interim.

While the evidence in this case would permit a reasonable juror to find, beyond a reasonable doubt, that Hatfield was operating the motor vehicle at the time of the accident, and that he was intoxicated at the time Deputy Shanks encountered and arrested him, there is no evidence to establish the approximate time of Hatfield's accident, when he last consumed alcohol, or whether any alcohol was available at or near the scene where he was found. The fact that Hatfield later refused to perform field sobriety or breathalyzer tests, and the circumstances surrounding his one-car accident, cannot supply a basis to find beyond a reasonable doubt that Hatfield was operating a motor vehicle *while* he was intoxicated, given the other evidentiary gaps in the record.

Opinion by: Alok Ahuja, Judge

August 30, 2011

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