OPINION SUMMARY

MISSOURI COURT OF APPEALS EASTERN DISTRICT

SOUTHERN DIVISION

STATE OF MISSOURI,	)	No. ED107538
	)	
Respondent,	)	
	)	Appeal from the Circuit Court of
	)	Cape Girardeau County
vs.	)	Cause No. 16CG-CR00658
	)	
LANCE M. SWALVE,	)	Honorable Craig D. Brewer
	)	
Appellant.	)	Filed: April 7, 2020

Lance M. Swalve ("Defendant") appeals the trial court's judgment entered upon a jury verdict finding him guilty of one count of driving while intoxicated ("DWI"). Defendant raises two points on appeal. In his first point, Defendant argues that the trial court abused its discretion in denying his motions for judgment of acquittal because the State presented insufficient evidence for a reasonable juror to find him guilty of the charged offense beyond a reasonable doubt. And in his second point, Defendant asserts that the trial court abused its discretion in denying his objection to the State's use of twelve beer bottles during its closing argument to demonstrate the amount of alcohol that Defendant had allegedly consumed before driving. Defendant contends that the prosecutor's statement constituted prejudicial error because the demonstrative use of the beer bottles misrepresented the evidence admitted at trial and there was a reasonable probability that it affected the jury's verdict.

AFFIRMED.

Southern Division Holds: We find that a reasonable jury could have found Defendant guilty beyond a reasonable doubt of the DWI charge from the evidence presented and the reasonable inferences drawn therefrom. The direct and circumstantial evidence presented (specifically, that showing Defendant obtained 13 beers, was observed intoxicated at 11:20 p.m., and drove away from the casino at 11:36 p.m.) supported the reasonable inference by the jury that Defendant was intoxicated while driving. We further find that the trial court did not abuse its discretion in overruling Defendant's objection to the prosecutor's statement during the State's closing argument referencing a 12-pack of beer bottles to demonstrate the amount of alcohol that Defendant consumed before driving. Considering the combined evidence presented, the State's inference that Defendant consumed an amount of alcohol equal to or greater than the 12-pack of beer was a reasonable one that fell within the wide latitude that the State is granted during closing argument. And there is no reasonable probability that the outcome of trial would have

been different absent the prosecutor's statement, as that statement simply repeated the evidence presented at trial and made a reasonable inference from that evidence.

Opinion by: Colleen Dolan, C.J.

Robert G. Dowd, Jr., J., and Lisa P. Page, J., concur.

Attorneys for Appellant: Travis L. Noble, Jr., Megan D. Atzert, and Philip G. Scanlon

Attorney for Respondent: Scott T. Reinagel

THIS SUMMARY IS NOT PART OF THE OPINION OF THE COURT. IT HAS BEEN PREPARED FOR THE CONVENIENCE OF THE READER AND SHOULD NOT BE QUOTED OR CITED.