

evidence is sufficient for a reasonable fact-finder to find a defendant guilty of each element of the crime beyond a reasonable doubt. *State v. Nash*, 339 S.W.3d 500, 508-09 (Mo. banc 2011). We accept all evidence favorable to the State as true. *Id.* at 509. Further, “[i]n our review, we accept as true all evidence and inferences favorable to the verdict.” *State v. Royal*, 277 S.W.3d 837, 830 (Mo.App. W.D. 2009).¹ It is the inference that Appellant was intoxicated when he was seen driving that Appellant challenges.

In the light most favorable to the State, and with the favorable inferences, the evidence indicated that, at approximately 3:30 a.m., Officer Piercy was driving his marked police cruiser when he pulled into a Kum & Go gas station to take a “personal break.” Prior to entering the lot, the officer had observed Appellant driving a moped toward the exit of the parking lot to leave; however, Appellant turned his moped around and drove back through the parking lot to a parking space in front of the convenience store attached to the gas station.² Officer Piercy parked, entered the store, and continued with his personal break. At some point, Appellant walked past Officer Piercy in the store and entered the store’s restroom. While Appellant was still in the restroom, Officer Piercy exited the store to wait for Appellant. The officer testified that he waited outside the store’s front door for Appellant because the officer thought Appellant might possibly

¹ As noted in *State v. Martin*, 607 S.W.3d 274, 280 (Mo.App. S.D. 2020):

This standard of review applies both to cases tried to a jury and to cases tried to the court. *State v. Livingston-Rivard*, 461 S.W.3d 463, 466 (Mo. App. S.D. 2015); *State v. Mitchell*, 203 S.W.3d 246, 249 (Mo. App. S.D. 2006); Rule 27.01(b), Missouri Court Rules (2020) (in a criminal case tried to the court, the trial court’s “findings shall have the force and effect of the verdict of a jury”).

² This raised Officer Piercy’s suspicions because, in his experience, someone who sees a marked police cruiser will stay in a private lot if they do not want to be stopped for a violation of some sort.

be intoxicated.³ When Appellant exited the store, Officer Piercy had the opportunity to observe Appellant's bloodshot eyes and slurred speech. There was no indication how long Appellant was in the restroom or how long Officer Piercy waited for him. The written records at the jail provide no assistance because the observation period and blood alcohol content test are shown to be two hours prior to the arrest.⁴

It is this disparity that Appellant claims provides the weakness in the State's case. He claims that some amount of time elapsed before Appellant's arrest and the State failed to establish that he was intoxicated prior to the time he entered the Kum and Go. He claims it is an equally likely inference that Appellant was drinking while in the restroom. Appellant cites to cases that involved an arrest that was remote in time between the driving and the arrest. See *Royal*, 277 S.W.3d at 840-41 ("When significant time lapses between the accident and the observation of the defendant's intoxication, the state must prove the defendant did not have access to alcohol during the interim. See *State v. Byron*, 222 S.W.3d 338, 343-44 (Mo.App. W.D. 2007) (finding insufficient evidence because defendant was not at accident scene, was found after an hour or more had elapsed since the accident, and had access to alcohol during the interim)."). In *Royal*, however, the court found:

There is no evidence that significant time had passed between [Defendant's] driving and the police observing him, but the evidence could support such a contrary inference. Nor was there evidence that he had access to alcohol after the accident. We disregard contrary inferences that can be drawn from the evidence unless a reasonable juror would be

³ The officer testified that this was based on his initial observation of Appellant turning around when the officer pulled into the parking lot and the smell of alcohol from Appellant's person when he walked past the officer in the store.

⁴ We note these time inconsistencies were brought to light at trial; however, the record on appeal does not contain Exhibit 4 (the blood alcohol content test report) or the officer's police report for us to independently verify the times. We accept that the times on the exhibit were inconsistent with the testimony of the officer as to when Appellant was first observed by the officer.

unable to disregard them. [State v.]*Knifong*, 53 S.W.3d [188,] 193 [(Mo.App. W.D. 2001)]. The contrary inferences drawn by [Defendant] are not of the nature that a reasonable fact finder could not disregard them. *See id.* [Defendant's] conduct causing the accident and his behavior observed after the accident support the reasonable inference that he was intoxicated while driving.

Royal, 277 S.W.3d at 840-41.

As in ***Royal***, Appellant's argument fails because there was not a significant time lapse between the time he was observed driving the moped and tested with a blood alcohol level of .267%. The officer smelled alcohol on Appellant.⁵ It is a reasonable inference that the officer did not spend an undue amount of time waiting for Appellant to come out of the restroom at the store. Although the officer did not testify as to the exact timing between his observation of Appellant driving the moped and his subsequent evidence of his intoxication, it is a reasonable inference that Appellant was already intoxicated when he drove the moped in front of the officer. The point is denied; the judgment is affirmed.

⁵ The officer testified on direct examination that while he and Appellant were in the store he "noticed [Appellant] had slurred speech and bloodshot eyes." On cross examination, defense counsel asked the officer about his observations of Appellant in the store and the following exchange took place:

[Defense counsel]: At that point you really – you hadn't observed any slurred speech or bloodshot eyes. What you really smelled was just the odor when he walked by you, which was just cause to have a chat with him, right?

[Officer Piercy]: Yes, sir.

[Defense counsel]: And so when he came back out of the store, then you had an opportunity to come face-to-face with him in the light, correct?

[Officer Piercy]: Yes, sir.

[Defense counsel]: All right. And would you agree with me that at that point you had the opportunity to observe his bloodshot eyes?

[Officer Piercy]: Yes, sir, I did.

Nancy Steffen Rahmeyer, P.J. – Opinion Author

Jeffrey W. Bates, J. – Concurs

William W. Francis, Jr., J. – Concurs