

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

STATE OF MISSOURI,

Respondent,

v.

JESSE LYDELL HICKS,

Appellant.

DOCKET NUMBER WD76416

Date: November 18, 2014

Appeal from:
Ray County Circuit Court
The Honorable Kevin L. Walden, Judge

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

Attorneys:
Gabriel E. Harris, Jefferson City, for respondent
Margaret M. Johnston, Columbia, MO for appellant

MISSOURI APPELLATE COURT OPINION SUMMARY
COURT OF APPEALS -- WESTERN DISTRICT

STATE OF MISSOURI

v.

JESSE LYDELL HICKS,

WD76416

Respondent,

Appellant.

Ray County

Jesse Hicks was charged as an aggravated driving while intoxicated (“DWI”) offender with one count of felony DWI, and one count of misdemeanor failure to stop at a stop sign. Following a bench trial, the Circuit Court of Ray County found Hicks guilty and sentenced him to concurrent sentences of five years for driving while intoxicated, and five days for failure to stop at a stop sign. Hick appeals.

AFFIRMED.

Opinion Holds:

Hicks argues that the trial court committed reversible error by reviewing a portion of the audio recording of the trial proceedings after the close of the evidence, and prior to issuing its guilty verdict. Because Hicks did not raise any objection to the trial court’s review of a portion of the trial testimony, or request a new trial, in the circuit court, he is limited to plain error review of this issue.

Hicks cites cases involving jury trials, in which the courts have held that it is error to permit a jury to review trial testimony during its deliberations, out of concern that the jury will give undue weight to the testimony it reviews. These concerns do not apply in a bench-trying case. We presume that a trial judge is not influenced by improper considerations in rendering his or her decisions. Moreover, trial judges frequently take cases under advisement following the conclusion of the evidence, and review transcripts or audio recordings of testimony before reaching their final decision. We are aware of no authority which prevents this practice. In addition, we note that the trial court reviewed only small portions of the audio recording, to verify that it had correctly heard particular testimony. Hicks makes no showing that any such limited review prejudiced him, particularly to the level of a manifest injustice.

Before: Division Four: Alok Ahuja, C.J., P.J., James E. Welsh and Gary D. Witt, JJ.

Opinion by: Alok Ahuja, Judge

November 18, 2014

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