

Note: Decisions of a three-justice panel are not to be considered as precedent before any tribunal.

ENTRY ORDER

VERMONT SUPREME COURT
FILED IN CLERK'S OFFICE

SUPREME COURT DOCKET NO. 2009-099

APR 1 2010

MARCH TERM, 2010

State of Vermont	}	APPEALED FROM:
	}	
v.	}	District Court of Vermont,
	}	Unit No. 3, Franklin Circuit
	}	
Trevor J. Parizo	}	DOCKET NO. 7-1-09 Frcs

Trial Judge: Michael S. Kupersmith

In the above-entitled cause, the Clerk will enter:

Defendant appeals from an adverse judgment in civil suspension proceedings. On appeal, defendant argues that the court's finding concerning operation is not supported by the evidence. We affirm.

At 8:30 a.m. on January 1, 2009, police responded to a call from defendant's former girlfriend, who complained that defendant was at her home, intoxicated and would not leave. The trooper at the scene spoke with defendant and observed indicia of intoxication. Defendant initially told the trooper that he had driven to his girlfriend's house, but then gave other explanations for how he got there, including that he walked from a friend's house and that a friend drove him. Defendant's vehicle was parked at the scene and the trooper testified that it was warm to the touch, despite the freezing outdoor temperature. The trooper recorded part of his encounter with defendant, including the performance of field sobriety tests. On the recording, defendant repeatedly denies driving to his girlfriend's house. Defendant was charged with driving while under the influence of alcohol (DUI). Defendant's evidentiary breath test was .185 percent at 10:30 a.m.

At the civil suspension hearing, defendant conceded that his blood alcohol concentration was above .08 percent at the time of his alleged operation. Defendant's defense, and the sole issue at trial, was whether defendant drove his vehicle at the time he was intoxicated. Defendant did not testify. Defendant's brother testified that on the morning of defendant's arrest the brother picked defendant up at a party and drove him to his girlfriend's house. Defendant's brother explained that another friend followed in his own vehicle and gave him a ride. He also stated that he saw defendant knock on the window of his girlfriend's house. The friend who held the party testified that he saw defendant leave the party and get into the passenger seat of his vehicle. Defendant's girlfriend testified that at 8:22 a.m. defendant arrived at her house and knocked on her window. She did not see anyone with defendant, and he appeared intoxicated when he arrived.

Based on the evidence, the court found that the most credible explanation of defendant's activities on the morning in question was the first statement defendant made to the trooper—that defendant drove himself to his girlfriend's house. The court found this statement more

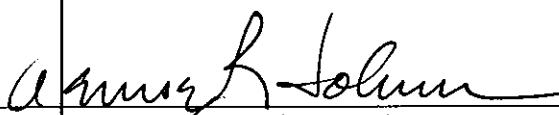
compelling than defendant's other explanations of how he arrived at his girlfriend's house or the testimony of defendant's witnesses. Thus, the court found that defendant had driven while intoxicated and granted judgment to the State. Defendant appeals.

On appeal, defendant argues that the court's findings are incomplete, erroneous, and fail to support the court's conclusion. The State has the burden of proving its case by a preponderance of the evidence at a civil license-suspension proceeding. See State v. Lowe, 169 Vt. 575, 576 (1999) (mem.). "Unless clearly erroneous, the findings of the trial court must be affirmed if supported by credible evidence." State v. Baxter, 145 Vt. 295, 297 (1984). Even where there are inconsistencies, or substantial evidence to the contrary exists, we will uphold the trial court's rulings that have credible evidentiary support. State v. Lancto, 155 Vt. 168, 171 (1990).

Defendant points to several pieces of evidence that he argues contradict the trial court's finding that defendant drove his vehicle to his ex-girlfriend's house, including defendant's statements on the recording and the testimony of defendant's witnesses. Essentially, defendant is challenging the court's assessment of the credibility of witnesses and the weight of the evidence. This is not grounds for reversal. As noted, determinations of credibility are for the trial court and we will reverse only where the court's findings lack credible evidence. Here, the court's finding is supported by credible evidence including the officer's testimony that defendant told him he drove to his ex-girlfriend's house and the circumstantial evidence that the vehicle was at the scene and still warm.

Affirmed.

BY THE COURT:


Denise R. Johnson, Associate Justice


Marilyn S. Skoglund, Associate Justice


Brian L. Burgess, Associate Justice