4-1-1958

Criminal Law -- Offense of Driving Under the Influence of Intoxicating Liquor When Vehicle Is Motionless

Luke R. Corbett

Follow this and additional works at: http://scholarship.law.unc.edu/nclr

Part of the Law Commons

Recommended Citation


Available at: http://scholarship.law.unc.edu/nclr/vol36/iss3/8

This Note is brought to you for free and open access by Carolina Law Scholarship Repository. It has been accepted for inclusion in North Carolina Law Review by an authorized editor of Carolina Law Scholarship Repository. For more information, please contact law_repository@unc.edu.
tive purpose, and questions asked must be pertinent to the matter under inquiry. When the investigation is by committee, the pertinency of questions is “determined by reference to the scope of the authority vested in the committee” by its authorizing resolution. Also, the congressional need for the information sought must be weighed against rights secured to the witness by the first amendment.

It seems logical that there would be no congressional need for an investigation if the principal goal of the committee were public exposure of the individual’s political beliefs or past associations. Since Congress has no power to expose for exposure’s sake, this should be true because Congress ought not to be able legally to conduct an investigation by committee which it could not legally conduct itself. Congress could have no legitimate need for information which it could not legally acquire. By this view, Watkins might have been decided on the ground that the evidence of improper committee motivation should have been admitted in order to give the defendant an opportunity to prove that he was convicted pursuant to an invalid investigation.

Gaston H. Gage

Criminal Law—Offense of Driving Under the Influence of Intoxicating Liquor When Vehicle Is Motionless

In 1955, 1,165 persons met death by accident on North Carolina highways. This placed North Carolina eighth in the nation in total highway accident deaths, and eleventh in deaths per vehicle-miles traveled—figures which are representative of North Carolina’s accident rate for recent years. Of these 1,165 accidental deaths, approximately ten per cent may be attributed to the effects of alcohol. These simple figures indicate the gravity of North Carolina’s highway “alcohol-accident” problem and the pressing need for some effective corrective action. It will be the purpose of this Note to consider one area of the

2 Ibid.
3 Id., 1945-55.
4 The ingestion of enough alcohol to give a blood content of between 0.10 and 0.15 per cent alcohol (which is for most people five or six cocktails) multiplies the chances of a person’s having an accident by three. If the blood content of alcohol goes above 0.15 per cent, a person’s chances of having an accident are multiplied by ten. Traffic Review & Digest, Aug. 1954, p. 2.
law where some such corrective action might appropriately be taken.

A situation which involves great potential danger to the highway public and which has given the courts of other states considerable difficulty is this: The defendant is found alone in the front seat of an automobile, obviously intoxicated. The car is stopped on a public thoroughfare at night; the lights are on, but the engine is dead. There is no evidence as to how the car got there, or how long it or the defendant has been there. The controlling statute makes it unlawful to operate or drive an automobile while under the influence of alcohol.\(^5\)

The question is, should the defendant be convicted on these facts of driving or operating a car while intoxicated? Do the foregoing facts constitute proof beyond a reasonable doubt that the defendant operated his car while intoxicated?

There have been four cases decided where the facts were essentially those given above,\(^6\) and the result is an even split as to what conclusions should be drawn from the facts.

Supporting the view that a set of facts such as outlined above is sufficient to go to the jury, and therefore sufficient to support a conviction of drunken driving, is *State v. Baumgartner.*\(^7\) There, the defendant was found at about midnight in his truck, stopped in the proper traffic lane on a main street. His lights and ignition were on, but the engine was off. The defendant was slumped over the wheel, unconscious. On appeal from a conviction of drunken driving, the defendant contended there was no evidence that he had driven the truck while drunk. The court rejected the argument, stating:

> It is true that no one actually saw defendant driving his truck, but the evidence amply supports the conclusion that he actually did so. From the undisputed facts in the case the inference is inescapable that defendant operated his truck while under the influence of intoxicating liquor.\(^8\)

\(^5\) See *N.C. Gen. Stat. § 20-138* (1953) provides as follows: "It shall be unlawful and punishable . . . for any person . . . who is under the influence of intoxicating liquor or narcotic drugs, to drive any vehicle upon the highways within this State."


\(^7\) *State v. Baumgartner*, *supra* note 6.

\(^8\) *Id.* at —, 91 A.2d at 223.
In accord with the foregoing case is *State v. Hazen,* where the court said,

> For all the record shows, the jury reached the obvious conclusion that the defendant drove the vehicle to the place where it was found, and that at the time was under the influence of intoxicating liquor, on the theory that a sober person would not park his car in the middle of the highway with the lights off, after dark . . . . [T]he circumstantial evidence above related was sufficient to withstand the demurrer and to support the verdict of guilty.\(^9\)

In contrast to these cases is *State v. Hall.* Again the facts were those of the hypothetical,\(^{12}\) but on appeal from a conviction this court stated:

> [T]here is no evidence that he had operated his automobile while intoxicated. He was not seen driving the car; the car was not seen in motion prior to the time the officers found it; no one knew how long it had been there; the defendant was seated on the passenger side . . . . The inferences that may be drawn from the circumstantial evidence are as consistent with innocence as with guilt.\(^{13}\)

In *State v. McDonough,* the court reversed a conviction with this language:

> Our law is settled that the proof of guilt must exclude, not every possible, but every reasonable supposition of the innocence of the accused . . . . We conclude that the evidence in the instant case does not exclude every reasonable supposition of the innocence of the defendant.

> . . . . A rational and reasonable conclusion would be that another person had driven the car and had gone to secure assistance in extricating the wheel from the wire.\(^{16}\)

\(^9\) 176 Kan. 594, 272 P.2d 1117 (1954). The defendant in this case was found on a rural road instead of in the city, and his lights were off instead of on.

\(^{10}\) Id. at 595, 272 P.2d at 1118.

\(^{12}\) 271 Wis. 450, 73 N.W.2d 585 (1955).

\(^{13}\) In this case, the car was stopped at night with the lights burning and the engine running. The right front door was open, and it appeared that the defendant had gotten out to answer a call of nature. When found, he was in the passenger’s seat.

\(^{16}\) State v. Hall, 271 Wis. 450, 452, 73 N.W.2d 585, 586 (1955).

\(^{18}\) State v. Hall, 129 Conn. 483, 29 A.2d 582 (1942). This case differs from the preceding cases in that the car was in a ditch on the right-hand side of the road with a wheel over a wire of a fence.

\(^{26}\) Id. at 485, 29 A.2d at 583. For cases involving slight variations on the facts of the principal cases given above and which uphold a conviction, see: *State v. Elliott,* 13 N.J. Super. 432, 80 A.2d 473 (App. Div. 1951) (Defendant was seen drunk, and a short time thereafter his car was seen being driven into his backyard with only one occupant. Shortly after this the defendant was found slumped over its steering wheel; held, logical conclusion that the defendant was driving under the influence of alcohol.); *Hughes v. State,* 161 Tex. Crim. 300, 276 S.W.2d
Drunken driving in North Carolina is prohibited by G.S. § 20-138, which defines three distinct elements of the offense: (1) driving a vehicle, (2) on the highway, (3) while under the influence of intoxicating liquor. In the situation hereinbefore presented, the latter two elements would not be in issue. As to the first, the North Carolina Supreme Court has held that "driving" imports motion, and, therefore, sitting at the wheel of a standing car would not, as such, violate the statute.

No North Carolina case has been found which has presented the hypothetical fact situation under consideration, but in a case bearing some analogy to the present situation, the state’s evidence showed that the defendant’s truck ran into A’s car, and that the defendant was “in the truck going off.” A got a policeman and they found the defendant alone in his truck a short time later about six-tenths of a mile from the scene of the accident. On the defendant’s motion for nonsuit, the court held the evidence sufficient to support a conviction of operating a vehicle while under the influence. This case differs from the principal cases discussed herein in that there was some direct evidence that the defendant driving was involved.

813 (1955) (Witness saw car being driven erratically; only one person in it. Car stopped, witness went on for eleven miles and informed patrolman who found defendant as reported. Conviction upheld.).

For similar cases refusing to uphold a conviction, see People v. Kelly, 27 Cal. App. 753, 70 P.2d 276 (App. Dep’t 1937) (Two cars collided; when witness appeared defendant and a young woman were standing at the scene. Appellate court reversed a conviction; driver could have been either party.); Kelley v. State, 294 S.W.2d 404 (Tex. Crim. 1956) (Witness wakened by sound of crash outside home; dressed and went to scene immediately. Found defendant in car alone, with the left front door open. Conviction reversed on appeal; state did not disprove hypothesis that car could have been driven by another.); Spinks v. State, 156 Tex. Crim. 418, 243 S.W.2d 173 (1951) (Witness heard crash and went to investigate. Found defendant climbing out left side of front seat. Conviction reversed for insufficient evidence.). For an extreme case upholding conviction, see Lytle v. State, 239 P.2d 175 (Okla. 1956) (Witness saw a car ahead of him speeding and apparently trying to hit another car. Witness took license number, and saw car parked; there was only one occupant. He then notified policeman, who found car as reported. Policeman then went into nearby pool hall where he found defendant, owner of car, who had the keys to the car. Policeman had seen defendant drive car “previously,” but defendant was not identified by witness. A conviction of drunken driving was upheld.).

18 For a discussion of this element of the offense, see State v. Perry, 230 N.C. 361, 53 S.E.2d 288 (1949).
22 Id. at 61, 79 S.E.2d at 355. The reported evidence did not make this point entirely clear.
The defendant who was found in the truck had been "in the truck going off" only a short time previously.22

The traditional rule governing the sufficiency of circumstantial evidence to go to the jury in North Carolina is stated in the leading case of State v. Matthews:23 "[T]he true rule is that the circumstances and evidence must be such as to produce a moral certainty of guilt and to exclude any other reasonable hypothesis."24 The differing functions of the court and the jury were explained in State v. Prince:25 "The sufficiency of proof in law is for the court—the moral weight of legally sufficient proof is for the jury."26 Applying the North Carolina rule as stated in the preceding cases to the hypothetical situation earlier stated, there is at least some doubt that the North Carolina Supreme Court would allow such a case to go to the jury under the existing statute.27

Ten states28 now have statutes making it unlawful to drive or to be in actual physical control of a vehicle while intoxicated,29 and both Canada and England have long had such statutes.30 Only four cases have been found involving the construction of state statutes prohibiting control of a vehicle while intoxicated.31 In State v. Webb,32 after first deciding that the Arizona statute33 defined a new crime, the court remarked,

It appears to us to be even more important for the legislature to prevent operators of cars who are under the influence of intoxicating liquors . . . from entering upon the highways and into the stream of traffic than to permit them to enter thereon and after a tragic accident has happened to punish them for maiming

23 65 N.C. 106 (1872).
24 Id. at 115.
26 Id. at 791, 108 S.E. at 331. For a collection of cases on the sufficiency of circumstantial evidence to go to the jury, see State v. Smith, 236 N.C. 748, 73 S.E.2d 901 (1952).
29 A typical statute is that of Arizona, which provides in pertinent parts: "It is unlawful and punishable . . . for any person who is under the influence of intoxicating liquor to drive or be in actual physical control of any vehicle within this state." ARIZ. REV. STAT. ANN. § 28-692 (1956).
30 CAN. REV. STAT. c. 36, § 285(4) (1927); Road Traffic Act, 1930, 20 & 21 Geo. 5, c. 43, § 15.
33 ARIZ. REV. STAT. ANN. § 28-692 (1956).
or causing the death of those who are lawfully in the use of such highways.34

Two of the other decisions35 are of similar import; the third, however, holds that a statute similar to that of Arizona defined but one crime,36 vis., drunken driving.

The English and Canadian cases seem now to be wholly agreed that statutes imposing criminal liability for being in the "actual physical control" of a vehicle while intoxicated defined a new crime.37 Prior to the statutory amendment in 1947,38 there was disagreement among the Canadian cases on whether mens rea was an essential element of the crime,39 but the amendment seems to have effectively established that being in control of a vehicle while intoxicated ipso facto constitutes the crime.40 Furthermore, it places the burden on an intoxicated person found in the driver's seat to prove that he was not in control.41

The English courts have gone even further in their decisions on this question. In a case decided in 1952,42 the defendant had come out of a pub, and was walking toward a van parked nearby. He was observed by an officer, who inquired if the defendant was going to drive the van home. Upon receiving an affirmative answer, the officer arrested the defendant for being in charge of a vehicle while intoxicated. The case was dismissed below, but on appeal, the court said, in abrupt language clearly indicative of its feelings on the matter, "I cannot understand the difficulty which the justices of Middlesex . . . found in this case."43 Whereupon it reversed the dismissal and remanded the case for trial.44

In view of the gravity of the "alcohol-accident" problem in North Carolina, and the probability that the North Carolina court would not

38 Criminal Code, 1947, 11 Geo. 6, c. 55, § 10 (Canada).
41 The present Canadian statute reads, in part, as follows: "[W]here a person occupies the seat ordinarily occupied by the driver of a motor vehicle or automobile he shall be deemed to have the care or control of the vehicle unless he establishes that he did not enter or mount the vehicle for the purpose of setting it in motion." CAN. REV. STAT. c. 36, § 285(4) (1927) (later amended, Criminal Code, 1954, 2-3 ELIZ. 2, c. 51, §§ 222-24 (Canada)).
43 Ibid.
44 Ibid. An interesting development of the English law was the extension of the provisions of their comparable law to include the operation of bicycles. Road Traffic Act, 1950, 20 & 21 Geo. 5, c. 43, § 15 (later amended, 4 & 5 ELIZ. 2, c. 67, § 11 (1956)).
sustain a conviction in the hypothetical hereinbefore presented, it is suggested that a statute such as that in force in Canada\textsuperscript{46} is desirable. Under the Canadian statute, the elements of the offense are two: (1) impairment of the defendant's ability to drive a motor vehicle by alcohol; and (2) having the care or control of a motor vehicle during such impairment. Such a statute properly relieves the courts of the burden of trying to reconcile the need for full proof of guilt of the accused with the conflicting need for protection of the public on the highways. It properly raises a presumption against one who is found in such circumstances, yet it does not foreclose a showing by the defendant that he was not actually in control\textsuperscript{46} of the vehicle, and was not, therefore, creating the danger which is to be obviated.

\begin{flushright}
LUKE R. CORBETT
\end{flushright}

\section*{Criminal Procedure—Arrest Without a Warrant—Informer's Tip as Constituting Reasonable Grounds}

In \textit{Draper v. United States}\textsuperscript{1} a federal narcotics agent was notified by a hired informer that defendant was peddling dope to several addicts in the Denver area. Four days later the informer revealed that defendant would go to Chicago to get heroin on a certain day and that he would return on a morning train on either of two given days. The informer's tips had always been reliable in the past. The agent had never heard of defendant before and it was not shown whether or not he had a criminal record. A complete description of physical characteristics, clothing, and manner of walking was given. On the morning of the second day the agent saw a man leaving the Chicago train who matched the description given by the informer. Defendant was approached and seized by the agent. When he gave a name which did not correspond with the tip his wallet was taken and his true identity learned. He was placed under arrest and a search of his person revealed two ounces of heroin and a syringe. The agent had no warrant.

Before trial\textsuperscript{2} defendant moved to suppress the evidence on the ground that the search was unreasonable under the fourth amendment\textsuperscript{3} because made incident to an unlawful arrest. Thus the sole issue on the

\begin{itemize}
\item[\textsuperscript{46}] \textsc{Can. Rev. Stat.} c. 35, § 285(4) (1927) (later amended, Criminal Code, 1954, 2-3 Eliz. 2, c. 51, §§ 222-24 (Canada)).
\item[\textsuperscript{46}] \textit{Rex v. Johnston}, [1950] 97 Can. Crim. R. 345, 3 D.L.R. 48 (dictum). \textit{Cf.} Jowett-Shooter \textit{v. Franklin}, [1949] 2 All E.R. 730 (K.B.) (Defendant who got into a car, but not under the steering wheel, and not intending to drive, found to be in charge of vehicle, but driving permit not suspended because no intent to drive).
\item[\textsuperscript{1}] 248 F.2d 295 (10th Cir. 1957).
\item[\textsuperscript{2}] \textit{United States v. Draper}, 146 F. Supp. 689 (D. Colo. 1956).
\item[\textsuperscript{3}] \textsc{U.S. Const.} amend. IV.
\end{itemize}