

**Affirmed and Opinion filed March 8, 2001.**

**In The**  
**Fourteenth Court of Appeals**

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**NO. 14-99-01229-CR**

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**SCOTT EVERETT SIMS, Appellant**

**V.**

**THE STATE OF TEXAS, Appellee**

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**On Appeal from County Criminal Court at Law No. 11  
Harris County, Texas  
Trial Court Cause No. 99-12819**

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**OPINION**

Scott Everett Sims appeals a misdemeanor conviction for driving while intoxicated<sup>1</sup> (“DWI”) on the grounds that the evidence was legally and factually insufficient to support his conviction. We affirm.

**Standard of Review**

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<sup>1</sup> A jury convicted appellant, and the trial court assessed punishment of 180 days confinement, probated for one year.

When reviewing legal sufficiency, we view the evidence in the light most favorable to the verdict and determine whether a rational trier of fact could have found the elements of the offense beyond a reasonable doubt. *Jackson v. Virginia*, 443 U.S. 307, 318-19 (1979); *Curry v. State*, 30 S.W.3d 394, 406 (Tex. Crim. App. 2000). In reviewing factual sufficiency, we ask whether a neutral review of all the evidence, both for and against the finding, demonstrates that the proof of guilt is either so obviously weak as to undermine confidence in the jury's determination, or, although adequate if taken alone, is greatly outweighed by contrary proof. *Johnson v. State*, 23 S.W.3d 1, 11 (Tex. Crim. App. 2000). We will set aside the verdict only if it is so contrary to the overwhelming weight of the evidence as to be clearly wrong and unjust. *Wesbrook v. State*, 29 S.W.3d 103, 112 (Tex. Crim. App. 2000).

#### **Sufficiency Review**

A person commits the offense of driving while intoxicated if, while operating a motor vehicle in a public place, he: (1) does not have the normal use of mental or physical faculties by reason of the introduction of alcohol, a controlled substance, a drug, or any combination of those substances into the body; or (2) has an alcohol concentration of 0.08 or more. TEX. PEN. CODE ANN. §§ 49.01(2), 49.04(a) (Vernon Supp. 2000). In challenging the legal and factual sufficiency of the evidence, appellant contends that: (1) there was no scientific evidence from which a rational trier of fact could have found he had a blood alcohol concentration of 0.08 or greater; and (2) the evidence was insufficient to prove he lost the use of his mental and physical faculties by reason of the introduction of alcohol into his body. Because the evidence need only be sufficient to prove one or the other of the challenged grounds and was sufficient to prove the latter, we need not address the former.

The evidence presented against appellant consisted mainly of the testimony of the arresting officer, Jonathan Forbes. Forbes testified that he was specially trained, through a DWI certification program, to recognize intoxicated persons and had previously worked for six to eight months with the DWI enforcement program while a reserve officer with the

Harris County Sheriff's Department, prior to working for the Jacinto Police Department. Forbes witnessed appellant's vehicle drive straight through a right turn-only lane, almost striking a curb, then swerve across three lanes to make a left turn. Additionally, Forbes testified that he drove behind appellant, with his emergency lights on and his horn and siren sounding, for approximately five hundred yards, before appellant stopped.

After pulling appellant's vehicle over, Forbes noticed that appellant's breath smelled of alcohol and that his eyes were watery and bloodshot. Forbes testified that appellant took several minutes to locate his driver's license, even skipping over it several times while fumbling through his wallet. Upon exiting his vehicle, appellant used the roof and door to climb out and then continued to lean on the vehicle. Forbes testified that upon receiving his ticket, appellant stated, "Well, a drunk man made a mistake on the policeman's ticket." Forbes attempted to administer a horizontal gaze nystagmus test, but appellant moved his head. Further, Forbes testified that he found an open can of cold beer standing upright on the floorboard under the middle of the bench seat of appellant's vehicle. Forbes testified that based on all of the above facts, his opinion was that appellant was intoxicated and did not have control of his mental and physical faculties. Because a rational trier of fact could infer from Forbes's testimony that appellant had lost the use of his mental and physical faculties by reason of the introduction of alcohol into his body, the evidence is legally sufficient to support his conviction.

With regard to factual sufficiency, Shirley Hardin, a passenger in appellant's vehicle, and appellant testified contrary to officer Forbes. Hardin said she never felt that appellant was driving unsafely and denied that he made the lane-crossing turn or almost hit the curb. Additionally, she testified that she never saw appellant place a beer can in the truck and denied that appellant exited the car with two hands and hung onto the side of the truck while talking to Forbes. Further, Hardin claimed appellant's eyes were bloodshot and watery because he was allergic to the cats that live at her chiropractic clinic, where he had picked her up that night.

During appellant's testimony, he denied that the officer followed him with the emergency lights and siren on, and that he exited the car strangely, leaned on his truck, had difficulty finding his license, or was drunk or impaired at the time of his arrest. In addition, appellant stated he made the statement to the officer about the mistake on the ticket after the officer accused him of being intoxicated.

Although there is conflicting testimony regarding appellant's condition on the night of his arrest, the supporting evidence is not so weak, or the contrary evidence so strong, as to render the verdict so contrary to the weight of the evidence as to be clearly wrong or unjust. Because appellant's first and second issues thus do not establish that the evidence is legally or factually insufficient to convict him of misdemeanor driving while intoxicated, they are overruled, and the judgment of the trial court is affirmed.

/s/     Richard H. Edelman  
          Justice

Judgment rendered and Opinion filed March 8, 2001.

Panel consists of Justices Edelman, Frost, and Lee.<sup>2</sup>

Do not publish — TEX. R. APP. P. 47.3(b).

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<sup>2</sup> Senior Justice Norman Lee sitting by assignment.