Affirmed and Opinion filed April 20, 2000.

In The

Fourteenth Court of Appeals

NO. 14-99-00151-CR

DON WAYNE MOYER, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the 337th District Court
Harris County, Texas
Trial Court Cause No. 783,937

O P I N I O N

Appellant, Don Wayne Moyer, was indicted for felony DWI. The indictment also contained two enhancement paragraphs, both for prior DWI convictions. A jury found appellant guilty, the enhancements true, and assessed forty years confinement. On this appeal, appellant complains that (1) the evidence was legally insufficient to support his conviction, and (2) one of the convictions stated in the enhancement paragraphs was not sufficiently proved. We affirm.

Facts

Hector Corona heard something crash into his Baytown restaurant. He went outside and a bystander pointed to a blue car, the front end of which had been damaged. He ran toward the car but it backed out and pulled away before he could see the driver. Corona got in his vehicle and followed the car. Corona testified that a person in a big truck also joined the pursuit. The driver of the blue car drove about one-half to one mile and stopped in the middle of the street. He exited the car and threw a bottle on the ground in front of Corona. Corona testified that he was able to observe the driver and identified him as appellant. He also stated that appellant appeared intoxicated and had blood on his forehead. The truck driver took the keys from appellant, who then left the scene on foot. About 15 to 20 minutes later, Officer Ocanas of the Baytown Police stopped appellant. Appellant told Ocanas he had been in an accident. Ocanas returned appellant to the scene where he had left the blue car. There, Corona identified him to Ocanas as the driver. Ocanas testified that appellant had red, glassy eyes, smelled of alcohol, and was off-balance, swaying from side to side. He proceeded to administer field sobriety tests. Ocanas then took appellant to jail, where he videotaped him. The tape was admitted and played for the jury. Based on his observations, Ocanas concluded appellant was legally intoxicated.

DWI

Appellant claims the evidence was legally insufficient to show he was the person who drove into the building because no one testified he actually observed the collision. In determining whether the evidence is legally sufficient to support the verdict, we view the evidence in the light most favorable to the verdict, asking whether any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. *See Lane v. State*, 933 S.W.2d 504, 507 (Tex. Crim. App. 1996).

Appellant's claim fails for two reasons. First, though no direct evidence at trial proved appellant drove the car into the building, there was more than sufficient circumstantial evidence in that regard. *See Earls v. State*, 707 S.W.2d 82, 85 (Tex. Crim. App. 1986) (identity of a perpetrator may be proven circumstantial evidence). Corona testified that he saw appellant's car back out of the wreckage of the building and, after following appellant a short distance, he identified appellant as the driver. Appellant was

also injured and admitted he had been involved in an accident. This was legally sufficient to establish appellant was the person who drove the car into the building.

Second, appellant has misstated the alleged offense. The indictment did not charge appellant with hitting the building, but with operating a vehicle while intoxicated. The State produced direct evidence of this by Corona's testimony that he witnessed appellant drive his vehicle, combined with the officer's testimony and the videotape establishing appellant was legally intoxicated.

Therefore, considering only the evidence which weighs in favor of the verdict, we find that a rational jury could find appellant guilty of DWI beyond a reasonable doubt. *See Lane*, 933 S.W.2d at 507. This point is overruled.

Prior Conviction

Next, appellant claims that a prior conviction for DWI in 1984 was improperly used to enhance his sentence because he did not sign a waiver of a jury trial in that case. The State argues that this issue is not properly before us. We agree. This issue was raised below in a habeas proceeding under a different cause number. We were not provided a copy of the reporter's record and the two causes were not consolidated. As a general rule, an appellate court cannot go to the record of another case to consider testimony found there. *See Turner v. State*, 733 S.W.2d 218, 223 (Tex. Crim. App. 1987). We see no reason not to apply the general rule here. Appellant also failed to preserve the issue for review by not stating a proper objection when the conviction was introduced at trial (he only "reurged" his prior objections made at the habeas proceeding).

We do note that aside from procedural infirmities, appellant's argument fails on the merits as well. The record reflects that the 1984 judgment recites that appellant "knowingly, intelligently, voluntarily and expressly waived trial by jury." Formal recitations give rise to a presumption of regularity and are binding in the absence of direct proof of their falsity. *See Breezily v. State*, 683 S.W.2d 446, 450 (Tex. Crim. App. 1984). Appellant states in his brief that he testified at the habeas proceeding that he did not sign a waiver of jury trial in the 1984 case. However, assuming this to be true, a defendant's testimony, without more, is insufficient to overcome the presumption of regularity raised by recitations in the judgment. *See*

Disheroon v. State, 687 S.W.2d 332, 334 (Tex. Crim. App. 1979). We therefore hold the trial court did not err in admitting evidence of the 1984 conviction. This issue is overruled.

The judgment is affirmed.

/s/ Don Wittig
Justice

Judgment rendered and Opinion filed April 20, 2000.

Panel consists of Chief Justice Murphy, Justices Hudson, and Wittig.

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