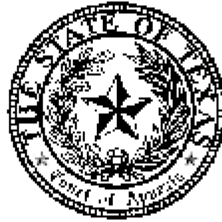
Affirmed and Opinion filed September 21, 2000.



In The

Fourteenth Court of Appeals

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NO. 14-98-00908-CR

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THOMAS WILLIAM HARDY, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the County Criminal Court at Law No. 12
Harris County, Texas
Trial Court Cause No. 98-04327

O P I N I O N

Over his plea of not guilty, a jury found Thomas William Hardy, appellant, guilty of the misdemeanor offense of driving while intoxicated. *See* TEX. PEN. CODE ANN. § 49.04. The trial court assessed punishment for 180 days in the Harris County Jail, probated for one year, and a $500 fine. In four points of error, appellant argues the evidence is legally and factually insufficient to support the verdict, the trial court erroneously overruled appellant's motion to suppress, and the trial court erroneously admitted evidence regarding the results of the horizontal gaze nystagmus test. We affirm.

Background

Officer Lindsey saw appellant make a sudden lane change without using a turn signal. Appellant changed lanes so abruptly that a car traveling in his new lane had to slam on its brakes to avoid hitting him. After being stopped, appellant failed several field sobriety tests.

Sufficiency of the Evidence

In his first two points of error, appellant argues the evidence is legally and factually insufficient to support the jury's verdict. We review legal sufficiency challenges to determine "whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *Jackson v. Virginia*, 443 U.S. 307, 319, 99 S. Ct. 2781, 61 L. Ed.2d 560 (1979); *Malik v. State*, 953 S.W.2d 234, 240 (Tex. Crim. App. 1997). The standard is the same in both direct and circumstantial evidence cases. *See Geesa v. State*, 820 S.W.2d 154, 162 (Tex. Crim. App. 1991). To review appellant's factual sufficiency issue, we must ask whether a neutral review of the evidence, both for and against the finding, demonstrates that the proof of guilt is so obviously weak as to undermine confidence in the jury's determination, or the proof of guilt, although adequate if taken alone, is greatly outweighed by contrary proof. *See Johnson v. State*, — S.W.3d —, 2000 WL 140257 *8 (Tex. Crim. App. Feb. 9, 2000).

The evidence must show appellant operated a motor vehicle in a public place while intoxicated. *See* TEX. PEN. CODE ANN. § 49.04. "Intoxicated" at the time appellant committed the offense means not having the normal use of mental or physicial faculties by reason of the introduction of alcohol concentration of .08 or more. *See* TEX. PEN. CODE ANN. § 49.01(2). "Alcohol concentration" means the number of grams of alcohol per 210 liters of breath. *See* TEX. PEN. CODE ANN. § 49.01(1)(A).

Appellant could not satisfactorily perform any of the field sobriety tests administered by Officer Lindsey. Taking all facts together, including appellant's statements, the odor of alcohol emanating from his vehicle, his poor driving, and his performance on the sobriety tests, Officer Lindsey concluded appellant had lost the normal use of his mental and physical

faculties. *See Hawkins v. State*, 964 S.W.2d 767, 769 (Tex. App.—Beaumont 1998, pet. ref'd). Additionally, appellant admitted that the samples of his breath measured by the intoxilyzer exceeded the legal limit. Thus, we find there was legally sufficient evidence to support the jury's verdict. We also determine that after a neutral review of the evidence, both for and against the verdict, the proof of guilt is not so obviously weak as to undermine confidence in the jury's determination. Accordingly, we overrule appellant's first two points of error.

Motion to Suppress

In his third issue, appellant argues the detention of his vehicle was unsupported by reasonable suspicion, and thus, illegal. Specifically, appellant contends the State did not provide evidence establishing grounds for a legitimate investigatory detention. We disagree.

A police officer is permitted to conduct a traffic stop if he observes a traffic violation. *See Armitage v. State*, 637 S.W.2d 936, 939 (Tex. Crim. App. 1982); *Valencia v. State*, 820 S.W.2d 397, 399 (Tex. App.—Houston [14th Dist.] 1991, pet. ref'd). Officer Lindsey testified appellant changed lanes so abruptly that a car traveling in his new lane had to slam on its brakes to avoid hitting him. Changing lanes at an unsafe time is a traffic violation; thus, stopping appellant on the basis of this violation was legal. *See* TEX. TRANS. CODE ANN. §§ 545.060 (Vernon 1999). Accordingly, we overrule appellant's third point of error.

Admission of Evidence

In his fourth point of error, appellant argues the trial court erred in admitting opinion evidence that the results of the horizontal gaze nystagmus ("HGN") test performance results equate to an alcohol concentration of .10%. However, appellant did not object to the officer's testimony regarding appellant's HGN tests. To preserve error regarding admission of evidence, a specific objection must be made when the evidence is offered. *See* TEX. R. EVID. 103(a)(1). Thus, appellant waived any error in the admission of the evidence. *See Cisneros v. State*, 692 S.W.2d 78, 82 (Tex. Crim. App. 1985); *DeJesus v. State*, 889 S.W.2d 373, 378

(Tex. App.—Houston [14th Dist.] 1994, no pet.). Accordingly, we overrule his fourth point of error.

Having overruled each of appellant's points of error, we affirm the judgment of the trial court.

/s/ Ross A. Sears
Justice

Judgment rendered and Opinion filed September 21, 2000.

Panel consists of Justices Sears, Draughn, and Lee.*

Do Not Publish — TEX. R. APP. P. 47.3(b).

* Senior Justices Ross A. Sears, Joe L. Draughn, and Norman Lee sitting by assignment.