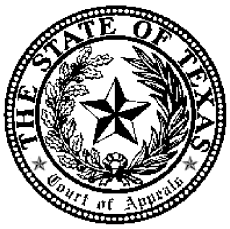
Affirmed and Opinion filed November 8, 2001.



In The

Fourteenth Court of Appeals

NO. 14-00-00950-CR

CHRISTOPHER MABRY, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the County Criminal Court of Law No. 8
Harris County, Texas
Trial Court Cause No. 0979433

O P I N I O N

Appellant, Christopher Mabry, was convicted by a jury of driving while intoxicated. The trial court assessed appellant's punishment at confinement in the Harris County Jail for 180 days and a fine of five hundred dollars; the jail sentence was suspended, and appellant was placed under the terms and conditions of community supervision for a term of one year. On appeal, appellant presents two issues for review: (1) did the court err in permitting the arresting officer to testify that a person is intoxicated when a certain number of clues are observed in a field sobriety test; and (2) was the evidence legally insufficient to sustain a

finding that appellant lost the normal use of his mental and physical faculties due to alcohol. We affirm.

Houston police officers were monitoring the speed of motor vehicles on a service road with a laser speed instrument when they observed appellant almost collide with another vehicle. Officer John Miller approached appellant's car to caution him regarding his speed and failure to keep a proper lookout for other vehicles. When appellant rolled down his window, Officer Miller detected the strong odor of alcohol and noticed appellant's eyes were "glassy." When asked if he had been drinking, appellant said he had consumed two or three beers. Officer Miller directed appellant to pull into a parking lot where he administered several field sobriety tests. One of the tests given to appellant was the horizontal gaze nystagmus (HGN) test.

At trial, Officer Miller testified about the various procedures employed when administering the HGN test and the various clues indicating intoxication. The State's attorney then asked:

> Q. And how many clues before — you've been trained would indicate that someone is intoxicated?
>
> A. The training and standard set is —
>
> MR. HALE: Objection, Your Honor, no predicate as far as the amount of training concerning how much — how many clues it would take for a person to be intoxicated. I object, Your Honor.
>
> THE COURT: You may clear that up. Overruled.
>
> Q. [By the State's attorney] Okay. Have you been trained to look for each one of these clues?
>
> A. Yes.
>
> Q. And have you been trained that a certain number of clues, once you get past a certain number of clues, that that would lead to an opinion that the person was intoxicated?
>
> A. Yes.
>
> Q. Okay. Is this training that you received standard training that — that any peace officer would go through?

A. In order to receive that training, you have to go through at advanced D.W.I. school.

Q. And you have being [sic] through that school?

A. Yes.

Q. How many clues then does it take before you would come to the opinion that someone is intoxicated based on H.G.N.?

MR. HALE: For the record, I'd object, no proper predicate.

THE COURT: Your objection is respectfully overruled.

A. It would be four clues.

Q. How many clues did the defendant exhibit during this test?

A. He exhibited six clues.

Appellant contends the trial court erred in permitting this testimony because an officer may not testify on the basis of an HGN test that a person is intoxicated. However, a timely and reasonably specific objection is required to preserve error for appellate review. TEX. R. APP. P. 33.1. Additionally, appellate arguments must correspond with the objection at trial. *Butler v. State*, 872 S.W.2d 227, 236 (Tex. Crim. App. 1994). If they do not, no error is preserved and they are waived. *Id.* Here, appellant's objection at trial was to the alleged failure to lay a proper predicate; his complaint on appeal is that the testimony was inadmissible because the officer was permitted to use the test results to reach an opinion regarding whether appellant was intoxicated. Accordingly, the error, if any, has not been preserved for review.

In his second issue, appellant contends the evidence is legally insufficient to show he was intoxicated due to alcohol. The standard of review for a challenge to the legal sufficiency of the evidence to support a conviction is well defined. In analyzing a challenge to the legal sufficiency of the evidence, we examine the evidence in the light most favorable to the verdict. *Narvaiz v. State*, 840 S.W.2d 415, 423 (Tex. Crim. App. 1992). We consider all of

the evidence whether properly or improperly admitted. *Chambers v. State*, 805 S.W.2d 459, 460 (Tex. Crim. App. 1991). We then determine whether any 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). Here, the State presented evidence appellant had a strong odor of alcohol on his breath. Further, prior to his arrest, appellant told Officer Miller he had been drinking beer, but at trial appellant testified that he had actually consumed two vodka tonics. Appellant exhibited signs of intoxication, namely, glassy bloodshot eyes and the inability to perform a number of field sobriety tests. We find a reasonable jury could rationally conclude from this evidence beyond a reasonable doubt that appellant was intoxicated on alcohol.

Appellant's contentions presented in his first and second issues are overruled; the judgment of the trial court is affirmed.

/s/ J. Harvey Hudson
Justice

Judgment rendered and Opinion filed November 8, 2001.
Panel consists of Justices Anderson, Hudson, and Frost.
Do Not Publish — TEX. R. APP. P. 47.3(b).