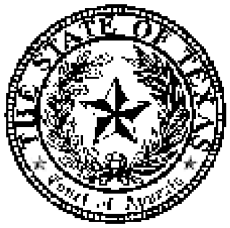
**Affirmed and Opinion filed May 4, 2000.**



**In The**

# Fourteenth Court of Appeals

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**NO. 14-98-00614-CR**

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**RONALD LYNN LUNSFORD, Appellant**

**V.**

**THE STATE OF TEXAS, Appellee**

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**On Appeal from the County Criminal Court at Law No. 7**
**Harris County, Texas**
**Trial Court Cause No. 98-04464**

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## O P I N I O N

A jury found Appellant Ronald Lynn Lunsford guilty of driving while intoxicated and assessed punishment of 180 days' imprisonment, probated for one year, and a $250 fine. In two points of error, Appellant contends that (1) the trial court erred in admitting the results of a field sobriety test because the State's witness had not been certified as an expert; and (2) the state trooper did not have reasonable suspicion to stop him based on the uncorroborated statements of an unknown informant. We affirm because the State's witness was properly certified as an expert and Appellant waived error regarding alleged lack of reasonable suspicion.

## BACKGROUND

A passing motorist told Texas Department of Public Safety Trooper Robert Chavez that a blue pickup truck had almost caused an accident while driving north on Interstate Highway 45. Trooper Chavez traveled north on I-45 and spotted Appellant's blue pickup truck. He observed Appellant make a wide left turn from I-45's feeder road onto West Road. He then watched as Appellant failed to drive in a single lane. When Trooper Chavez stopped him, he noticed that Appellant had alcohol on his breath, glassy eyes, slurred speech, and poor balance. Chavez asked Appellant to perform several field sobriety tests, including the horizontal gaze nystagmus test (HGN). Appellant failed, and Chavez arrested him for driving while intoxicated.

**POINT OF ERROR ONE**

In his first point of error, Appellant contends that the trial court erred in permitting the testimony of the trooper about the results of Appellant's HGN test because the State failed to prove that the trooper was qualified as an expert. The State responds that the trooper was properly qualified as an expert, and thus admitting his testimony about the HGN was not error.

Whether a witness is qualified to testify as an expert is within the discretion of the trial court. *See Sterling v. State*, 800 S.W.2d 513, 521 (Tex. Crim. App. 1990). We will not disturb the trial court's ruling absent a clear abuse of discretion. *See id.* To testify about a defendant's results on the HGN test, a witness must be qualified as an expert in the test, specifically in its administration and technique. *See Emerson v. State*, 880 S.W.2d 759, 769 (Tex. Crim. App. 1994). "In the case of a police officer or other law enforcement official, this requirement will be satisfied by proof that the officer has received practitioner certification by the State of Texas to administer the HGN." *Id.*

Trooper Chavez testified that he had been certified by the National Highway Transportation and Safety Administration in field sobriety tests, including the HGN. To obtain this certification, he attended forty hours of classes at a course given by Texas A&M University. In this class, he practiced the HGN on live people. He also completed required field time for the certification. When Appellant objected there was no evidence that the trooper's certification was on file and that the course was approved by the Texas Commission on Law Enforcement Standards and Education, as required for state certification, the Court asked Trooper Chavez if he had these met these standards. Trooper Chavez replied, "As far as being

certified, yes." Accordingly, the evidence shows that Trooper Chavez was qualified by the state to administer the HGN test. The court did not err in permitting him to testify about Appellant's performance on the HGN. We overrule point of error one.

**POINT OF ERROR TWO**

In his second point of error, Appellant contends that the state trooper did not have reasonable suspicion to stop him based on the uncorroborated statements of an unknown witness. However, Appellant has waived any error. In order to complain on appeal, an appellant must make a timely and specific objection or motion at trial and receive an adverse ruling. *See* TEX. R. APP. P. 33. Appellant did not file a motion to suppress on the basis of lack of reasonable suspicion. He also did not object on this basis when Trooper Chavez testified about the passing motorist's statements about Appellant's driving. Though Appellant objected that the passing motorist's statements were hearsay, an objection stating one legal theory may not be used to support a different legal theory on appeal. *See Rezac v. State*, 782 S.W.2d 869, 870 (Tex. Crim. App. 1990). Accordingly, we overrule point of error two.

Having overruled both Appellant's points of error, we affirm the judgment of the trial court.

/s/ Joe L. Draughn
Justice

Judgment rendered and Opinion filed May 4, 2000.

Panel consists of Justices Draughn, Lee, and Hutson-Dunn.*

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

* Senior Justices Joe L. Draughn, Norman Lee, and D. Camille Hutson-Dunn sitting by assignment.