Affirmed and Opinion filed October 4, 2001.

In The

Fourteenth Court of Appeals

NO. 14-00-00259-CR

JERRY N. WALLS, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the County Criminal Court at Law No. 15
Harris County, Texas
Trial Court Cause No. 99-35582

O P I N I O N

The trial court found the appellant guilty of driving while intoxicated and sentenced him to one year of probation and a $250 fine. The appellant contests the legal and factual sufficiency of the evidence that he was driving and that he was intoxicated at the time he was driving. We affirm.

Around five o'clock on an August afternoon, Deputy Sheriff Larry Franks approached a truck stopped on the shoulder of the road to investigate and found the appellant seated in the driver's seat with his seat belt fastened and the engine running. The

truck appeared to be in park, and the appellant had a telephone in one hand. There was no one else in or around the vehicle.

The appellant admitted to Officer Franks that he had been driving, starting at 3:45 p.m. from the 610-Loop and Kirby.[1] Franks noticed a strong odor of alcohol and had the appellant perform field sobriety tests, all of which he failed. When Franks asked the appellant three different times how much alcohol he had consumed, the appellant's estimate increased with each new response until he admitted to drinking six to eight beers. Franks took the appellant into custody, and at 5:51 p.m. the appellant submitted a breath sample indicating that his blood-alcohol level was .244.

Standard of Review

In evaluating legal and factual sufficiency, we follow the usual standards of review. See *Wesbrook v. State*, 29 S.W.3d 103, 111 (Tex. Crim. App. 2000) (legal); *King v. State*, 29 S.W.3d 556, 563 (Tex. Crim. App. 2000) (factual).

A person commits the offense of driving while intoxicated by operating a motor vehicle in a public place while intoxicated. TEX. PENAL CODE ANN. § 49.04 (Vernon Supp. 2001). There is no dispute that the appellant was intoxicated around 5:00 p.m. when Officer Franks approached the truck and the appellant performed the field sobriety tests. The appellant, however, asserts that the evidence is legally and factually insufficient either to show that he was intoxicated at the time he drove the truck or to corroborate his extrajudicial confession that he was driving.

Evidence Appellant Was Driving

The appellant argues that evidence that the engine was on and that he was in the driver's seat are insufficient to prove that he was driving. *Reddie v. State*, 736 S.W.2d 923,

[1] Officer Franks estimated that it should have taken the appellant about thirty-five to forty minutes to arrive at the place along the road where he found the appellant's truck at 5:00 p.m.

925 (Tex. App.—San Antonio 1987, pet. ref'd) (reversing conviction when accused was found asleep behind the wheel of a vehicle with the engine running). He also argues that an uncorroborated extrajudicial confession is insufficient to sustain a conviction for driving while intoxicated. See *Coleman v. State,* 704 S.W. 2d 511, 512 (Tex. App.—Houston [1st Dist.] 1986, pet. ref'd) (reversing conviction when accused was standing outside car with several others when officers arrived). But it does not follow that the evidence is insufficient *when all of these facts are combined*. To the contrary, evidence that the accused was the sole occupant of a vehicle and was seated in the driver's seat with the engine running, when combined with an admission to the arresting officer that he was driving, is sufficient to show that the accused was driving. *Youens v. State,* 988 S.W.2d 404, 408 (Tex. App.—Houston [1st Dist.] 1999, no pet.). We find the evidence was factually and legally sufficient to establish that the accused was driving his truck.

Evidence of Intoxication At the Time of Driving

The appellant relies on *Ballard v. State,* to support his argument that the evidence is insufficient to show he was intoxicated while he was driving. 757 S.W.2d 389 (Tex. App.—Houston [1st Dist.] 1988, pet. ref'd). In that case, evidence that the accused was found slumped over the wheel of a vehicle with its engine running was held insufficient. But there was no evidence in that case as to how long the accused had been in the car, how long the car had been parked, who had parked it, or whether the accused was intoxicated before the time the car was parked. Evidence in this case established all these matters. Even when viewing the evidence in a neutral light, the appellant had been sitting in the parked vehicle for forty minutes at most; there was no sign of empty beer bottles or any other indication that the appellant had been drinking since he arrived; and his blood/alcohol level was .244 at 5:50 p.m.. Although there was no testimony as to what the appellant's blood/alcohol level may have been at 4:20 or 4:25 p.m., appellate courts have sustained convictions without such evidence. See *Weaver v. State,* 721 S.W.2d 495, 499 (Tex. App.

—Houston [1st Dist.] 1986, pet. ref'd). The totality of the evidence is factually and legally sufficient to support the appellant's conviction for driving while intoxicated.

We affirm the trial court's judgment.

/s/ Scott Brister
Chief Justice

Judgment rendered and Opinion filed October 4, 2001.

Panel consists of Chief Justice Brister and Justices Fowler and Seymore.

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