Affirmed and Opinion filed October 12, 2000.

In The

Fourteenth Court of Appeals

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NO. 14-99-00853-CR

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JORGE MANZANO GONZALEZ, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the 262nd District Court
Harris County, Texas
Trial Court Cause No. 799,469

O P I N I O N

Appellant, Jorge Manzano Gonzalez, was convicted of intoxication assault and, based on one enhancement paragraph, sentenced to confinement in the penitentiary for twenty years. On appeal, he contends the evidence introduced at trial was both legally and factually insufficient to support his conviction. We affirm.

The record reflects that when appellant attempted to back his vehicle out of a grocery store parking lot, he nearly hit a parked car. He then drove forward, striking a blue truck. Victor Mauricio, a 6 year-

old-boy, was standing by the truck when it was struck. The force of the collision pinned Victor between the truck and another vehicle. Victor's pelvis was crushed, ripping his urethra out of the bladder.[1]

Appellant exited his vehicle and began knocking beer cans out of the car. He then tried to flee the scene, but was detained by two neighborhood men until the police arrived. An officer was flagged down and, after confirming the arrival of paramedics, he transported appellant to the police station where several sobriety tests were administered. Appellant failed the sobriety tests. A subsequent breath test revealed appellant's blood alcohol level more than three and a half times the legal limit.

Appellant's defense was that he was struck in the head and "carjacked" by an unknown assailant just seconds before the accident. He testified that he was left lying on the ground as the carjacker sped away. As he struggled to his feet, appellant said he saw his car about fifty feet away. As he stumbled toward the car, he claims he was apprehended by onlookers who mistakenly accused him of being the driver.

Legal Sufficiency of the Evidence

The test for determining the legal sufficiency of evidence is 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." *Staley v. State*, 887 S.W.2d 885, 888 (Tex. Crim. App. 1994); *Geesa v. State*, 820 S.W.2d 154, 156 (Tex. Crim. App. 1991). Thus, when we conduct a legal sufficiency review:

> . . . we do not weigh the evidence tending to establish guilt against the evidence tending to establish innocence. Nor do we assess the credibility of witnesses on each side. We view the evidence in a manner favorable to the verdict of guilty. . . [Regardless of] how powerful the exculpatory evidence may seem to us or how credible the defense witnesses may appear. If the inculpatory evidence standing alone is enough for rational people to believe in the guilt of the defendant, we simply do not care how much credible evidence is on the other side.

Ex parte Elizondo, 947 S.W.2d 202, 206 (Tex. Crim. App. 1996).

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[1] After several surgeries, doctors are uncertain whether Victor will ever regain normal urinary function.

Charlene Hearne, a witness for the State, watched the incident from her front door. She testified she saw appellant driving the car. She further said she saw the car strike the blue truck, injuring Victor. She then saw appellant attempt to flee. She positively identified appellant in court as the driver of the vehicle. Appellant was also identified as the driver by the victim. The arresting officer testified that appellant emitted a strong odor of alcohol, slurred his speech, and was unable to speak in complete sentences. Moreover, he said appellant admitted to both drinking and driving the car. Finally, the State offered into evidence of the results of appellant's breath test.

A person commits intoxication assault "if the person, by accident or mistake. . . while operating a motor vehicle in a public place while intoxicated, by reason of that intoxication causes serious injury to another." TEX. PEN. CODE ANN. § 49.07 (Vernon 1994). Viewing the aforementioned evidence, we find a rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. Appellant's first point of error is overruled.

Factual Sufficiency of the Evidence

In conducting a factual sufficiency review, this Court views all the evidence without the prism of "in the light most favorable to the verdict." *See Clewis v. State*, 922 S.W.2d 126, 129 (Tex. Crim. App. 1996). A factual sufficiency review, however, must be deferential to the trier of fact, to avoid substituting our judgment for that of the jury. *Id*. at 133. We maintain this deference by reversing only when "the verdict is against the great weight of the evidence presented at trial so as to be clearly wrong and unjust." *Santellan v. State*, 939 S.W.2d 155, 164 (Tex. Crim. App. 1997).

The State's evidence is detailed above. The only defense evidence was appellant's own testimony. He admitted spending the majority of the day "hang[ing] around and messing with music and TV and drinking." He claims to have been driving to the store, when he picked up an individual he did not know and could not describe. After stopping at the store, appellant said he "blacked out" as though someone had hit him in the head. He awoke on the sidewalk, convinced he had been car-jacked. He saw his car, abandoned, about fifty feet down the road, and, when he went to investigate, was accused of being the driver.

We find, after examining the evidence in this case, the verdict is not against the great weight of the evidence so as to be clearly wrong and unjust. Appellant's second point of error is overruled, and the judgment of the trial court is affirmed.

/s/ J. Harvey Hudson
Justice

Judgment rendered and Opinion filed October 12, 2000.

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

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