

**Affirmed and Opinion Filed October 31, 2017.**



**In The  
Court of Appeals  
Fifth District of Texas at Dallas**

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**No. 05-16-01303-CR**

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**ROBERT JACKSON RAMSEUR, Appellant  
V.  
THE STATE OF TEXAS, Appellee**

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**On Appeal from the County Court at Law No. 4  
Collin County, Texas  
Trial Court Cause No. 004-88899-2015**

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**MEMORANDUM OPINION**

Before Justices Lang, Evans, and Schenck  
Opinion by Justice Evans

A jury convicted Robert Jackson Ramseur of driving while intoxicated, second offense (DWI). In accordance with a plea agreement, the trial court assessed punishment at confinement in the county jail for 35 days and a \$500 fine. In a single issue, appellant contends the evidence is legally insufficient to support the jury's verdict. We affirm the trial court's judgment.

**EVIDENCE PRESENTED**

Casey Williams, a tow truck driver, testified that on May 22, 2015, he saw a black Hummer traveling on the Dallas North Tollway at approximately 11:30 p.m. The Hummer swerved into Williams's lane, almost hitting him, then swerved from one lane to another. Williams testified he saw the Hummer's tires brush the median wall at one point, but the vehicle did not crash into it. Williams followed the Hummer and called 911 because he believed the Hummer's driver was intoxicated. Williams told the jury a 911 dispatcher transferred him to a North Texas Tollway

Authority dispatcher who in turn routed his call to the highway patrol, the agency responsible for patrolling the North Tollway. Williams testified that when the Hummer exited the North Tollway in Frisco, it went to the drive-thru lane of a fast-food restaurant. Williams parked across the street from the restaurant and waited for a trooper to arrive.

Trooper Brian Coleman, a certified peace officer for the State of Texas, testified he was dispatched to the scene of a possible intoxicated driver that a tow truck driver was following on the North Tollway. Coleman saw the suspect vehicle, a black Hummer, pull into a fast-food restaurant's drive-thru lane and noticed the vehicle did not have a license plate lamp. Coleman testified he pulled the Hummer over because it did not have a license plate lamp, which is a traffic violation, and because he had already received information from the dispatcher that the driver had almost hit someone on the North Tollway and was possibly intoxicated. Coleman testified that when he approached the passenger side of the vehicle, he immediately smelled the odor of alcohol. Appellant, who was sitting in the driver's seat, was the sole occupant. When Coleman asked appellant if he had been drinking, appellant admitted he had two wine drinks with friends at a country club in Dallas. Coleman testified he observed that appellant had slurred speech, bloodshot glassy eyes, disheveled clothing, and was slow to answer questions. Coleman asked appellant to step out of the vehicle and perform field sobriety tests. Appellant exited the vehicle, but he refused to perform any tests and stated "he had not been drinking." Coleman testified he believed appellant did not have the normal use of his mental faculties due to alcohol consumption; he arrested appellant for DWI and handcuffed him. Coleman searched appellant's vehicle and found a styrofoam cup in the center console that contained a liquid that smelled like wine. Appellant agreed to give a breath sample. Coleman transported appellant to the county jail's intoxilyzer room and observed another officer administer the breathalyzer test to appellant. Coleman testified that although he instructed appellant "several times" to blow into the device, appellant's breath samples were deficient. Coleman believed appellant purposefully pretended to blow into the machine.

#### APPLICABLE LAW

In reviewing a challenge to the sufficiency of the evidence, we examine all the evidence in the light most favorable to the verdict and determine whether a rational trier of fact could have found the essential elements of the offense beyond a reasonable doubt. *Jackson v. Virginia*, 443 U.S. 307, 319 (1979); *Wise v. State*, 364 S.W.3d 900, 903 (Tex. Crim. App. 2012). We are required to defer to the jury's credibility and weight determinations because the jury is the sole judge of the witnesses' credibility and the weight to be given their testimony. *See Jackson*, 443 U.S. at 326.

The State was required to prove beyond a reasonable doubt that appellant was intoxicated while operating a motor vehicle in a public place and he had a prior DWI conviction. *See* TEX. PENAL CODE ANN. § 49.04(a), 49.09(a) (West Supp. 2016); *see also Crenshaw v. State*, 378 S.W.3d 460, 466 (Tex. Crim. App. 2012). "Intoxicated" means not having the normal use of mental or physical faculties by reason of the introduction of alcohol. *See id.* § 49.01(2). It is the jury's function to resolve any conflicts in the evidence, and the jury is free to accept or reject any and all of the evidence presented by either side. *See* TEX. CODE CRIM. PROC. ANN. art. 38.04 (West 1979); *Wesbrook v. State*, 29 S.W.3d 103, 111 (Tex. Crim. App. 2000).

#### ANALYSIS

Appellant does not dispute that he has a prior DWI conviction. He contends only that the evidence is legally insufficient to prove he was intoxicated beyond a reasonable doubt when he was pulled over by Coleman. Appellant asserts that because no evidence was presented that showed he was intoxicated at the time he operated his motor vehicle, no rational juror should have found him guilty beyond a reasonable doubt. The State responds that the jury properly found appellant guilty of DWI, second offense.

The jury heard testimony from Williams that appellant was driving in an unsafe manner on the North Tollway when appellant's vehicle almost hit his tow truck. Williams also testified that

appellant's vehicle swerved from lane to lane and appellant's vehicle's tires brushed the concrete median at one point. Williams followed appellant and called 911 to report a possible intoxicated driver. Trooper Coleman testified that after he pulled appellant's vehicle over, he smelled alcohol from the passenger side window, and that appellant exhibited several signs that led Coleman to believe appellant had lost the normal use of his mental faculties due to alcohol consumption, including slurred speech, bloodshot glassy eyes, disheveled clothing, and the odor of alcohol. Coleman also found a cup in the center console of appellant's vehicle that he believed contained wine. Additionally, Coleman testified appellant initially said he had consumed two wine drinks that evening, but later denied having any alcoholic beverage that evening.

Viewing the evidence under the proper standard, we conclude a rational trier of fact could find beyond a reasonable doubt that appellant operated a motor vehicle in a public place while intoxicated. Thus, the evidence is sufficient to sustain the conviction for DWI. *See Crenshaw*, 378 S.W.3d at 466; *Wise*, 364 S.W.3d at 903. We overrule appellant's sole issue on appeal.

We affirm the trial court's judgment.

/David Evans/  
DAVID EVANS  
JUSTICE

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TEX. R. APP. P. 47  
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**Court of Appeals  
Fifth District of Texas at Dallas**

**JUDGMENT**

ROBERT JACKSON RAMSEUR,  
Appellant

No. 05-16-01303-CR      V.

THE STATE OF TEXAS, Appellee

On Appeal from the County Court at Law  
No. 4, Collin County, Texas  
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Opinion delivered by Justice Evans. Justices  
Lang and Schenck participating.

Based on the Court's opinion of this date, the judgment of the trial court is **AFFIRMED**.

Judgment entered this 31st day of October, 2017.