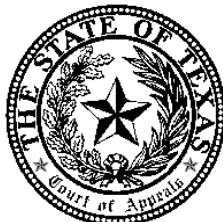


Affirmed and Memorandum Opinion filed January 4, 2011.



In The

**Fourteenth Court of Appeals**

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NO. 14-09-00871-CR

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**STACY DANE HARMES, Appellant**

**V.**

**THE STATE OF TEXAS, Appellee**

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**On Appeal from the County Court at Law No. 3 & Probate Court  
Brazoria County, Texas  
Trial Court Cause No. 170737**

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**MEMORANDUM OPINION**

Appellant Stacy Dane Harmes challenges the legal and factual sufficiency of the evidence to support his conviction for driving while intoxicated. We affirm.

**BACKGROUND**

In August 2009, a Brazoria County jury convicted appellant of driving while intoxicated and assessed his punishment at one-year confinement and a \$2,000 fine. On the jury's recommendation, the trial court placed appellant on community supervision for a term of twenty-four months. Appellant filed a motion for new trial, which the trial court denied. Appellant timely filed his notice of appeal.

In February 2010, this court abated appellant's appeal to determine whether appellant desired to pursue his appeal because he had not filed a brief. The trial court conducted a hearing on our abatement order, and appellant testified that he did wish to prosecute his appeal. He further stated that he hired Charles Kingsbury to represent him at trial and on appeal. Mr. Kingsbury explained his failure to file a brief, and the trial court provided an additional thirty days for a brief to be filed. The trial court further found that appellant was not indigent.

The record does not reflect that appellant filed a formal designation of the reporter's record pursuant to Texas Rule of Appellate Procedure 34.6(b)(1). The Reporter's Record includes five volumes. Volume 2, entitled "Trial Excerpt," is the only volume including evidence admitted at trial and was recorded on August 12, 2009. The trial court's docket sheet, however, indicates that appellant's trial continued on August 13, 2009, with appellant calling a witness during the guilt-innocence phase of his trial. Further, the docket sheet reflects that both the State and appellant presented evidence and testimony during the punishment phase of trial.

## ANALYSIS

In his only two appellate issues, appellant has challenged the legal and factual sufficiency of the evidence to support his conviction.<sup>1</sup> On November 9, 2010, this court notified appellant that he had not filed a complete reporter's record of the guilt-innocence and punishment proceedings of his trial, as required by Texas Rule of Appellate Procedure 34.6(c)(5).<sup>2</sup> Because appellant is not indigent, we informed him that if he did not provide proof of payment for preparation of the necessary portions of the reporter's

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<sup>1</sup> While this appeal was pending, the Court of Criminal Appeals held that only the legal sufficiency standard should be used to evaluate the sufficiency of the evidence in a criminal case. *Brooks v. State* 323 S.W.3d 893, 894 (Tex. Crim. App. 2010) (plurality op.); *id.* at 926 (Cochran, J., concurring).

<sup>2</sup> This rule requires that, in criminal cases where the appellant complains that the evidence is insufficient to support a finding of guilt, the record *must* include all the evidence admitted at trial on the issue of guilt or innocence and punishment. Tex. R. App. P. 34.6(c)(5).

record by November 30, 2010, we would consider his appeal on the excerpt of the record before us. Appellant has not responded to our directive.

Review of the issues raised by appellant requires a reporter's record containing all the evidence adduced at trial. *See* Tex. R. App. P. 34.6(c)(5); *Rowell v. State*, 66 S.W.3d 279, (Tex. Crim. App. 2001) (“[Rule 34.6] requires only one thing to be included: In a criminal case in which one of the appellant's stated issues is that the evidence is insufficient to support a finding of guilt, the record must include all the evidence admitted at the trial.”). Because appellant, who is not indigent, has not requested and arranged to pay for the reporter's record in a timely fashion, we are prevented from reaching the merits of his issues. *See Greenwood v. State*, 823 S.w.2d 660, 661 (Tex. Crim. App. 1992) (“[A] sufficiency challenge cannot be raised with only a partial record.”); *see also Lucas v. State*, No. 05-01-00078-CR, 2003 WL 21771333, at \*6 (Tex. App.—Dallas Aug. 1, 2003, pet. ref'd) (citing Tex. R. App. P. 34.6(c)(5) and noting that court would be unable to review merits of challenges to sufficiency of evidence even absent briefing waiver because the record was missing three and one-half days of State's case in chief). We therefore overrule his issues and affirm the trial court's judgment.

/s/ Adele Hedges  
Chief Justice

Panel consists of Chief Justice Hedges, Justice Jamison, and Senior Justice Mirabal.\*  
Do Not Publish — Tex. R. App. P. 47.2(b).

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\* Senior Justice Margaret Garner Mirabal sitting by assignment.