Fourth Court of Appeals
San Antonio, Texas

MEMORANDUM OPINION

No. 04-18-00393-CR

Mario Eliud **VEDIA**,
Appellant

v.

The **STATE** of Texas,
Appellee

From the 186th Judicial District Court, Bexar County, Texas
Trial Court No. 2017-CR-0268
Honorable Laura Parker, Judge Presiding

Opinion by: Rebeca C. Martinez, Justice

Sitting: Rebeca C. Martinez, Justice
Beth Watkins, Justice
Liza A. Rodriguez, Justice

Delivered and Filed: July 17, 2019

AFFIRMED

Mario Eliud Vedia was convicted of the felony offense of driving while intoxicated ("DWI") and was sentenced to fifty-five years confinement. Vedia appeals his conviction, arguing the trial court erred in: (1) failing to *sua sponte* define the term "operate" in the jury charge and (2) overruling Vedia's motion for directed verdict because the evidence is legally insufficient to support the operation element of driving while intoxicated. We affirm the trial court's judgment.

BACKGROUND

On April 25, 2016, Officer Benjamin Johns was dispatched to the scene of a hit and run accident in Bexar County, Texas, following a 9-1-1 call. The caller provided the description of a damaged blue pickup truck purported to have fled westbound after the collision.

Following the initial 9-1-1 call, a damaged blue pickup truck pulled into a convenience store nearby. The vehicle parked at an angle and took up multiple parking spots. An individual, later identified as Vedia, got out of the truck and walked into the corner store. Two eyewitnesses suspected something might be wrong and called the police.

Officer Justin Cruz arrived at the convenience store. Vedia told the officer that his tire blew out while he was driving to his aunt's house, causing his truck to hit a cement barricade. Officer Cruz contacted a DWI Officer, Officer Steven Rivas, who arrived shortly thereafter. Officer Rivas spoke with Vedia, whom the officer noted had watery, blood-shot eyes and was sweating and disoriented. Vedia admitted to driving the car to the corner store to use the phone after his tire blew out; he told Officer Rivas that nobody else was in the truck with him. At Officer Rivas's direction, Vedia completed three standardized field sobriety tests. Vedia failed all three tests and was arrested for DWI.

Soon thereafter, Officer Rivas learned of the hit and run accident and determined that the pickup truck at the convenience store matched the description of the vehicle reported in the initial 9-1-1 call. Officer Rivas transported Vedia to the city magistrate's office. There, Vedia consented to a breath test but was unable to blow into the breathalyzer with enough pressure to obtain a result. The officer obtained a search warrant for Vedia's blood, which tested negative for alcohol but positive for methamphetamine.

Vedia was later charged with the felony offense of DWI and pled not guilty. *See* TEX. PENAL CODE ANN. § 49.0 (defining offense of driving while intoxicated); *id.* § 49.09(b)(2)

(enhancing DWI offense to a third degree felony if the defendant has two previous DWI convictions). At trial, Vedia stipulated to two previous DWI convictions. A jury found Vedia guilty, and the trial court assessed punishment at fifty-five years confinement. Vedia timely appealed the trial court's judgment.

JURY CHARGE

In his first issue, Vedia asserts the trial court committed reversible error by failing to *sua sponte* define "operate" in the jury charge.

Standard of Review and Applicable Law

Reviewing a claim of charge error is a two-step process, which requires an appellate court to determine first whether error exists. *Cortez v. State*, 469 S.W.3d 593, 598 (Tex. Crim. App. 2015). If the reviewing court finds the jury instruction erroneous, the court must then analyze that error for harm. *Id.*

The purpose of a written jury charge is to provide jurors with the law applicable to the case, which requires the trial court to set forth each element of the charged offense in the instruction. TEX. CODE CRIM. PROC. ANN. art. 36.14; *Vasquez v. State*, 389 S.W.3d 361, 366 (Tex. Crim. App. 2012); *see also Green v. State*, 476 S.W.3d 440, 445 (Tex. Crim. App. 2015) ("The Code of Criminal Procedure requires that instructions to the jury be limited to setting forth the law applicable to the case and that they not express any opinion as to the weight of the evidence."). It is generally impermissible to include definitions of terms that are not statutorily defined in the jury instruction because such terms are not considered "applicable law" under Article 36.14 of the Texas Code of Criminal Procedure. *Green*, 476 S.W.3d at 445; *see also Walters v. State*, 247 S.W.3d 204, 214 (Tex. Crim. App. 2007) ("Normally, if the instruction is not derived from the [penal] code, it is not 'applicable law.'"). Accordingly, jurors are free to assign any meaning "acceptable in common parlance" to words that are not specifically defined by the Legislature.

Kirsch v. State, 357 S.W.3d 645, 652 (Tex. Crim. App. 2012) (quoting *Denton v. State*, 911 S.W.2d 388, 390 (Tex. Crim. App. 1995)).

An exception to the general rule exists for words that have acquired a technical or particular common law meaning. TEX. GOV'T CODE ANN. § 311.011; *Green*, 476 S.W.3d at 445 (explaining words with an established legal meaning are "considered as having been used in their technical sense"); *compare Kirsch*, 357 S.W.3d at 651 (concluding the inclusion of the definition of the term "operate" in the jury charge was reversible error because it does not have an established legal meaning and amounted to an improper comment on the weight of the evidence in a DWI case), *with Medford v. State*, 13 S.W.3d 769, 772 (Tex. Crim. App. 2000) (finding it necessary to include the definition of "arrest" in the jury instruction to properly guide the jury's determination on whether a complete arrest had been effectuated prior to appellant's alleged escape).

Analysis

In his brief, Vedia concedes the verb "operate" is a statutorily undefined term; however, he argues the word has acquired a peculiar meaning in the law and that a legal definition was necessary for the jury to resolve the conflict in evidence. We disagree.

The instant case is directly controlled by *Kirsch v. State*. In *Kirsch*, the Court of Criminal Appeals held it was error for the trial court to define the word "operate" in a jury instruction for the offense of DWI. *Kirsch*, 357 S.W.3d at 652. The court held that the trial court's definition of "operate" amounted to an impermissible comment on the weight of the evidence and concluded the term had not acquired a technical or particular meaning in the law. *Id.* Thus, the jury should have been free to construe the word "operate" according to the rules of common usage. *Id.* Vedia contends the term "operate" should have been defined in the jury charge because it acquired a technical meaning when Vedia contested the issue of whether he "operated" a motor vehicle by adducing evidence that his son drove the blue pickup truck. We reject Vedia's attempt to

distinguish *Kirsch* because whether an issue is contested has no bearing on whether a term has acquired a technical or particular meaning in the law. *See Kirsch*, 357 S.W.3d at 650; *see also id.* at 648 n.3 (noting the defendant contested the legal and factual sufficiency of the evidence before the court of appeals).

Because this court is bound by *Kirsch*, we hold the trial court did not err by failing to *sua sponte* define "operate" because a definition of the term would improperly impinge on the jury's fact-finding authority. *See id.* We overrule Vedia's first issue.

LEGAL INSUFFICIENCY

In his second issue, Vedia argues the record is legally insufficient to support the jury's finding that he was operating a motor vehicle while intoxicated. *See* TEX. PENAL CODE ANN. § 49.04(a). Vedia contends that only a modicum of evidence was presented to show he was operating the vehicle because (1) witnesses could not identify him as the driver and (2) his extrajudicial confession was not corroborated and is, therefore, legally insufficient evidence to sustain his conviction.

Standard of Review and Applicable Law

In assessing the legal sufficiency of the evidence, a reviewing court must determine 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." *Nisbett v. State*, 552 S.W.3d 244, 262 (Tex. Crim. App. 2018) (quoting *Jackson v. Virginia*, 443 U.S. 307, 319 (1979)) (emphasis in original) (internal quotations omitted). This standard defers to the responsibility of the jury to fairly "resolve conflicts in the testimony, to weigh the evidence, and to draw reasonable inferences from basic facts to ultimate facts." *Nisbett*, 552 S.W.3d at 262 (quoting *Jackson*, 443 U.S. at 319) (internal quotations omitted). A reviewing court does not independently assess the evidence in the record but is limited to safeguarding against

a potentially irrational fact finder. *Nisbett*, 552 S.W.3d at 262; *see also Morgan v. State*, 501 S.W.3d 84, 89 (Tex. Crim. App. 2016) (declaring the key question an appellate court must ask when evaluating legal sufficiency is whether the evidence in the record "actually supports a conclusion that the defendant committed the crime that was charged"). The factfinder's verdict must stand unless, upon review, it is determined that the record contains no evidence or merely a modicum of evidence probative of an element of the charged offense. *Moreno v. State*, 755 S.W.2d 866, 867 (Tex. Crim. App. 1988) (en banc). A mere modicum of evidence constitutes such evidence that could not, by itself, rationally support a conviction beyond a reasonable doubt. *Jackson*, 443 U.S. at 320.

When evaluating legal sufficiency, an appellate court must consider the cumulative force of all the evidence. *Nisbett*, 552 S.W.3d at 262. Direct and circumstantial evidence are equally as probative in establishing a defendant's guilt. *Id.* Circumstantial evidence, alone, may be enough to support a guilty verdict. *Id.* "Each fact need not point directly and independently to guilt if the cumulative force of all incriminating circumstances is sufficient to support the conviction." *Id.*

The corpus delicti rule is one of evidentiary sufficiency that is applicable to cases involving an extrajudicial confession.[1] *Miller v. State*, 457 S.W.3d 919, 924 (Tex. Crim. App. 2015). "When the burden of proof is 'beyond a reasonable doubt,' a defendant's extrajudicial confession does not constitute legally sufficient evidence of guilt absent independent evidence of the corpus delicti." *Hacker v. State*, 389 S.W.3d 860, 865 (Tex. Crim. App. 2013). "The corpus delicti of DWI is operating a motor vehicle in a public place while intoxicated." *Taylor v. State*, 572 S.W.3d 816, 820 (Tex. App.—Houston [14th Dist.] 2019, pet. ref'd); *see also* TEX. PENAL CODE ANN.

[1] Corpus delicti is Latin for "body of the crime." *Vasquez v. State*, No. 13-97-227-CR, 1998 WL 34202174, at *2 (Tex. App.—Corpus Christi June 4, 1998, no pet.) (not designated for publication).

§ 49.04(a); *Threet v. State*, 250 S.W.2d 200 (Tex. Crim. App. 1952).[2] We recognize the "identity of the perpetrator is not a part of the corpus delicti and may be established by an extrajudicial confession alone." *Gribble v. State*, 808 S.W.2d 65, 70 (Tex. Crim. App. 1990) (en banc). But in a DWI case, like the instant one, where no one other than Vedia was apparently intoxicated and had the potential to drive the blue pickup truck, there can be no "perpetrator"—and no crime—if Vedia was not driving. *See Arocha v. State*, No. 02-14-00042-CR, 2014 WL 6997405, at *2 n.4 (Tex. App.—Fort Worth Dec. 11, 2014, no pet.) (mem. op., not designated for publication). Therefore, in cases like this one, courts have required corroborating evidence, independent of the extrajudicial confession, that the defendant operated the vehicle to prove the corpus delicti of DWI. *See, e.g.*, *Taylor*, 572 S.W.3d at 820; *Huff v. State*, 467 S.W.3d 11, 21 (Tex. App.—San Antonio 2015, pet. ref'd); *Lara v. State*, 487 S.W.3d 244, 249 (Tex. App.—El Paso 2015, pet. ref'd).

Evidence Adduced at the Hearing

The trial court heard testimony regarding the hit and run accident. Rolanda Lott testified that she was driving westbound on the interstate behind a pickup truck driven by her boyfriend. Lott testified that, while she was driving, she observed a truck take a sharp right turn and strike the passenger side of the pickup truck Lott's boyfriend was driving, causing it to veer into a ditch. Lott testified that the other truck swerved off the road, came to a stop, and then left the scene of the accident. Lott never saw the driver of the other truck. Lott, however, contacted the police and reported the license plate number and a description of the other truck. Lott's son, Elijah Price,

[2] Vedia asserts the corpus delicti of felony DWI is operating a motor vehicle in a public place while intoxicated after two previous convictions for DWI. However, the punishment enhancement of a DWI from a misdemeanor to a felony based on two prior convictions is not part of the corpus delicti for DWI. *Compare* TEX. PENAL CODE ANN. § 49.04(a) (defining the crime of DWI), *with id.* § 49.09 (providing for punishment enhancements); *see also McDuff v. State*, 939 S.W.2d 607, 614–16, 19–21 (Tex. Crim. App. 1997) (considering appellant's challenges to punishment enhancement separate from his challenge to the sufficiency of the evidence based on the corpus delicti rule); *Taylor*, 572 S.W.3d at 819–20, 22 (analyzing punishment enhancement issues separately from sufficiency challenges in a DWI case).

testified that he was a passenger in the truck driven by Lott's boyfriend. Price testified that he too could not identify the driver of the other truck.

Officer Cruz was dispatched to the convenience store on the night of Vedia's arrest. Officer Cruz testified that Vedia stated he was on his way to visit his aunt when his tire blew out, causing his truck to collide with a concrete barricade.

Officer Steven Rivas testified that he was called to evaluate Vedia for potentially driving while intoxicated. According to Officer Rivas, Vedia stated that he was driving the truck and was alone in the vehicle.

An eyewitness at the convenience store, Henry Pessina, testified at trial that he recalled seeing a truck with a blown out tire pull into the parking lot of the corner store and take up multiple parking spots. Pessina testified he was within a couple of feet of the truck when he saw Vedia, whom he described as looking "out of it" and in "bad shape," get out of the vehicle and walk straight into the store. Pessina was unsure whether Vedia got out of the driver's or passenger's side, and he did not see another person with Vedia. Pessina then called 9-1-1.

Stephanie Prichard was working as a manager at the convenience store the night Vedia was arrested. Prichard testified that she was stationed at the register facing the parking lot, but she did not see the blue pickup truck drive into the lot, and she did not see Vedia driving the truck. Prichard identified Vedia at trial as the "erratic" individual she was in contact with the day of Vedia's arrest. She also identified Vedia's blue pickup truck, testifying that the front end of the truck was missing, the driver's side window was gone, the windshield was cracked or broken, and the back half of the truck was sheared off. Prichard testified she did not see another person with Vedia.

Sharon Tello was working with Prichard at the front register of the convenience store on the night of Vedia's arrest. Tello identified Vedia at trial as the individual driving the damaged blue pickup truck that parked at an angle in front of the store and took up multiple parking spots.

She testified that she saw Vedia get out of the driver's side of the truck before he walked into the store. Tello stated that no one else was in the vehicle at the time Vedia pulled up. On cross examination, Tello stated she was not one hundred percent sure Vedia was the driver.

The trial court also heard testimony from Vedia's son, Mario Vedia, Jr. ("Mario"), who alleged he was the driver of the blue pickup truck on the night in question and Vedia was his passenger. Mario testified he fled the scene of the accident out of fear because he was on probation. He stated he obtained a ride to his house from an unidentified person in the parking lot and left Vedia at the convenience store. Mario testified Vedia was already arrested by the time he returned to the store.

Analysis

Based on the evidence before the trial court, we hold the record is legally sufficient to support Vedia's conviction for DWI and satisfy the corpus delicti rule. In his brief, Vedia contends the evidence is legally insufficient to support a finding that he was the driver of the blue pickup truck. We disagree.

Tello identified Vedia as the individual driving the blue pickup truck. Although on cross examination Tello stated she was not one hundred percent certain that Vedia got out of the truck from the driver's side of the vehicle, the jury was free to credit Tello's identification of Vedia and discount her qualification in its role to determine credibility and weigh the evidence; the jury's finding that Tello was the driver was not unreasonable in light of all the evidence in the record. *See Nisbett*, 552 S.W.3d at 262; *Wawrykow v. State*, 866 S.W.2d 96, 99 (Tex. App.—Beaumont 1993, pet. ref'd) ("Texas law . . . provides that a jury may believe a witness even though the witness's testimony has been contradicted; and that a jury may accept any part of a witness's testimony and reject the rest.") (citing *Sharp v. State*, 707 S.W.2d 611, 614 (Tex. Crim. App. 1986)); *see also Lancon v. State*, 276 S.W.3d 518, 523 (Tex. App.—San Antonio 2008,

pet. ref'd) (affirming the defendant's conviction irrespective of an identifying witness admitting on cross examination that there was a possibility he may have mistaken the defendant for someone else because "resolution of the conflict[ing] [evidence] rested on the credibility of the witnesses and was the province of the jury" and, in consideration of all the evidence in the record, such a finding was not unreasonable); *Cooper v. State*, No. 01-06-00193-CR, 2007 WL 4465528, at *3–4 (Tex. App.—Houston [1st Dist.] Dec. 20, 2007, no pet.) (mem. op., not designated for publication) (dismissing the defendant's sufficiency challenge because, even though the only eyewitness who could identify the defendant at trial "failed to do so with one hundred percent certainty[,]" the cumulative force of the evidence rationally supported a finding of guilt beyond a reasonable doubt).

Pessina, Prichard, and Tello testified that Vedia was unaccompanied at the convenience store on the night of his arrest. This testimony, although circumstantial, corroborated Vedia's extrajudicial confession and reasonably supported the jury's inference that Vedia drove the truck into the parking lot. *See Perez v. State*, 432 S.W.2d 954, 954–55 (Tex. Crim. App. 1968) (concluding evidence showing the appellant was alone in the driver's seat of a vehicle that had crashed into the side of a house was sufficient to support a finding that appellant was driving the vehicle); *Hines v. State*, 383 S.W.3d 615, 623 (Tex. App.—San Antonio 2012, pet. ref'd) (determining a jury reasonably could have found that the appellant operated an overturned vehicle prior to a wreck based on the appellant's confession to driving and witness testimony that a man of about the appellant's height pulled himself out of the driver's side window of the vehicle and that nobody else was around); *McCann v. State*, 433 S.W.3d 642, 646–48 (Tex. App.—Houston [1st Dist.] 2014, no pet.) (concluding testimony that the appellant was three hundred to four hundred yards from a crashed vehicle registered to him, that the appellant had sustained injuries consistent with a crash, that the crashed vehicle's hood was warm—indicating recent use—and

that no other pedestrians were in the area sufficiently corroborated the appellant's admission that he drove, despite the fact that no witness saw the appellant drive); *Folk v. State*, 797 S.W.2d 141, 144 (Tex. App.—Austin 1990, pet. ref'd) (asserting evidence that the appellant was alone at the side of the road near a burning vehicle that was registered to the appellant's roommate was consistent with the conclusion that the appellant drove the vehicle); *Thomas v. State*, 756 S.W.2d 59, 61–62 (Tex. App.—Texarkana 1988, pet. ref'd) (finding there was sufficient evidence for a rational trier of fact to have determined that the appellant was the driver of the vehicle based on testimony that the appellant was found alone in the driver's seat of a vehicle that was still "smoking"); *see also Nisbett*, 552 S.W.3d at 262 ("[C]ircumstantial evidence is as probative as direct evidence in establishing a defendant's guilt.").

Finally, Mario's purported admission at trial that he was the operator of the vehicle on the night of Vedia's arrest does not support reversal of the trial court's judgment because the jury was free to disbelieve Mario. *See Morgan*, 501 S.W.3d at 89 (indicating reversal on grounds of legal insufficiency is unwarranted if the trier of fact chose to believe evidence in the record tending to prove guilt beyond a reasonable doubt); *see also Murray v. State*, 457 S.W.3d 446, 448–49 (Tex. Crim. App. 2015) (explaining an appellate court defers to the jury's responsibility to fairly weigh the evidence and resolve conflicts in testimony); *Arocha*, 2014 WL 6997405, at *3 (explaining evidence corroborating a defendant's extrajudicial confession of DWI need not conclusively negate the possibility that someone else was driving).

Viewing the evidence in the light most favorable to the verdict, the record contains legally sufficient evidence to corroborate Vedia's extrajudicial confession to satisfy the corpus delicti rule and to support the jury's finding that Vedia operated a motor vehicle while intoxicated. We overrule Vedia's second issue.

CONCLUSION

We affirm the trial court's judgment.

Rebeca C. Martinez, Justice

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