Fourth Court of Appeals
San Antonio, Texas

MEMORANDUM OPINION

No. 04-19-00581-CR

Pedro **BAUTISTA**,
Appellant

v.

The **STATE** of Texas,
Appellee

From the 81st Judicial District Court, Wilson County, Texas
Trial Court No. 17-01-010-CRW
Honorable Lynn Ellison, Judge Presiding

Opinion by: Rebeca C. Martinez, Justice

Sitting: Rebeca C. Martinez, Justice
Irene Rios, Justice
Beth Watkins, Justice

Delivered and Filed: July 15, 2020

AFFIRMED

Pedro Bautista appeals his conviction for the offense of driving while intoxicated, third or more. *See* TEX. PENAL CODE ANN. §§ 49.04(a), 49.09(b)(2). In a single issue, Bautista contends the evidence is legally insufficient to support his conviction. We affirm.

BACKGROUND

Bautista was charged with committing the offenses of evading arrest or detention with a vehicle and driving while intoxicated, third or more. After a trial by jury, Bautista was found guilty of both offenses and the trial court assessed punishment at ten years' confinement for each

offense. The trial court suspended its sentence and placed Bautista on community supervision for a period of ten years. As a condition of Bautista's community supervision, the trial court ordered Bautista to serve 180-days' imprisonment for each offense in the Wilson County Jail. The trial court ordered the sentences to run concurrently.

On appeal, Bautista challenges only his conviction for the offense of driving while intoxicated, third or more.

STANDARD OF REVIEW & APPLICABLE LAW

When assessing the sufficiency of the evidence to support a criminal conviction, we must determine whether, after viewing all of the evidence in the light most favorable to the verdict, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. *Powell v. State*, 194 S.W.3d 503, 506 (Tex. Crim. App. 2006) (citing *Jackson v. Virginia*, 443 U.S. 307, 318–19 (1979)). We must give deference to "the responsibility of the trier of fact to fairly resolve conflicts in testimony, to weigh the evidence, and to draw reasonable inferences from basic facts to ultimate facts." *Hooper v. State*, 214 S.W.3d 9, 13 (Tex. Crim. App. 2007) (quoting *Jackson*, 443 U.S. at 318–19). "When the record supports conflicting inferences, we presume that the factfinder resolved the conflicts in favor of the prosecution and therefore defer to that determination." *Clayton v. State*, 235 S.W.3d 772, 778 (Tex. Crim. App. 2007) (citing *Jackson*, 443 U.S. at 326).

A person commits the offense of driving while intoxicated if the person is intoxicated while operating a motor vehicle in a public place. TEX. PENAL CODE ANN. § 49.04(a). The offense of driving while intoxicated is a third-degree felony if the person has been previously convicted of the offense twice before. *Id.* § 49.09(b)(2). In his sole complaint on appeal, Bautista contends the evidence was legally insufficient to prove that he was intoxicated. As it relates to this appeal,

"intoxicated" means "not having the normal use of mental or physical faculties by reason of the introduction of alcohol . . . into the body." *Id.* § 49.01(2)(A). "Evidence of intoxication may include (1) slurred speech, (2) bloodshot eyes, (3) the odor of alcohol on the person, (4) the odor of alcohol on the breath, (5) unsteady balance, or (6) a staggered gait." *Harris v. State*, 204 S.W.3d 19, 25 (Tex. App.—Houston [14th Dist.] 2006, pet. ref'd).

DISCUSSION

The State presented Trooper Anthony Flores of the Texas Department of Public Safety as a witness at trial. The footage from Trooper Flores's vehicle was also admitted at trial. The footage mirrored much of Trooper Flores's testimony. Trooper Flores testified that, on the night of August 13, 2016, he noticed that Bautista's vehicle did not have an operational rear license plate light. As he followed the vehicle, Trooper Flores observed the vehicle "hit the feeder line a couple of times." When he attempted to initiate a traffic stop, Trooper Flores stated it looked as if the vehicle was going to pull over, but then it accelerated down a residential road. As Trooper Flores pursued the vehicle, he estimated the vehicle was going approximately fifty-five miles per hour in a residential neighborhood that had a speed limit of thirty miles per hour. In his pursuit of the vehicle, he observed the vehicle veer off the road and almost strike a trash can. About half a mile into the neighborhood, the vehicle pulled into a residential driveway. Bautista exited the vehicle and then grabbed the tailgate area of the vehicle. Bautista refused to comply with Trooper Flores's commands to move away from the vehicle, which led Trooper Flores to use force to take Bautista to the ground. Trooper Flores testified that, at this point, he believed Bautista was intoxicated because Bautista had slurred speech, had trouble maintaining his balance, and there was a strong odor of alcohol on Bautista's person.

Given his observations, Trooper Flores arrested Bautista for driving while intoxicated. Trooper Flores testified that, during the drive to Wilson County Jail, Bautista asked to be charged with public intoxication or with an open container, and not with driving while intoxicated. While at Wilson County Jail, Trooper Flores attempted to administer several field sobriety tests; however, Bautista failed to comply with instructions for the horizontal gaze nystagmus test and claimed he could not perform the walk-and-turn and the one-legged stand tests because he was missing toes on his feet. When Trooper Flores asked Bautista to "just stand straight with your hands down to your side," Bautista could not comply and swayed in response. Thereafter, Trooper Flores attempted to administer a breathalyzer test, which Bautista refused. Trooper Flores opined that, based on his training, experience, and personal observations of Bautista, he believed Bautista was intoxicated.

Bautista presented his wife, Eva Bautista, as a witness at trial. Eva testified that Bautista suffers from several medical conditions, including diabetes and hypertension. Additionally, Bautista has a "bad back," has undergone knee surgery, has suffered a minor stroke, and has had toes amputated on both of his feet. According to Eva, as a result of these medical conditions, Bautista has "real bad" balance. Eva stated that she has observed Bautista intoxicated before and, in her opinion, he was not intoxicated on the night in question.

Viewing this evidence in the light most favorable to the verdict and deferring to the jury's resolution of the weight and credibility of the evidence, a rational juror could have found beyond a reasonable doubt that Bautista was intoxicated. *See, e.g.*, *Annis v. State*, 578 S.W.2d 406, 407 (Tex. Crim. App. [Panel Op.] 1979) (concluding the evidence was sufficient to establish intoxication based on the arresting officer's testimony that the appellant's vehicle swerved across a lane-dividing line several times and that the appellant appeared disorderly, his speech was

"mush-mouthed," his eyes were red, his breath smelled of alcohol, and he swayed from side to side when walking or standing); *Vaughn v. State*, 493 S.W.2d 524, 526 (Tex. Crim. App. 1972) (holding there was sufficient evidence of intoxication where "[t]he arresting officer testified that he saw appellant's car weaving down the road, that he was speeding, his eyes were bloodshot, and that appellant told him at one point he had had six or so beers to drink that night"). Accordingly, Bautista's sole issue on appeal is overruled.

CONCLUSION

The trial court's judgment is affirmed.

Rebeca C. Martinez, Justice

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