

In The
Court of Appeals
Ninth District of Texas at Beaumont

NO. 09-16-00416-CR

JOE FORD WOODS JR., Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the 9th District Court
Montgomery County, Texas
Trial Cause No. 16-06-06442-CR

MEMORANDUM OPINION

A jury convicted Joe Ford Woods Jr. of felony driving while intoxicated¹ and found that Woods used or exhibited a deadly weapon, namely, a motor vehicle, during the commission of the offense or during immediate flight therefrom. After Woods pleaded “true” to six enhancement allegations, the trial court assessed Woods’s punishment at life in prison. In his sole issue on appeal, Woods argues that

¹The indictment alleged that Woods had six prior convictions for driving while intoxicated.

the trial court erred by denying his motion for directed verdict because the evidence is insufficient to establish, beyond a reasonable doubt, that he was driving while intoxicated. We affirm the trial court's judgment.

THE EVIDENCE

Kerry Larimore testified that in February 2015, she and her husband were stopped at a stop sign located at Keith Street and Loop 494 in New Caney when a blue Ford pickup truck struck their vehicle on the front driver's side. According to Kerry, the truck turned too wide onto their street, struck the driver's-side door, and bounced off a little bit, and Kerry saw the driver fly toward the windshield, bounce back into his seat, and grab the steering wheel. Kerry explained that after striking their vehicle, the driver just sped by them, bouncing around in his front seat the whole time. Kerry testified that the driver was a white male who appeared to be somewhere between sixty and seventy years old, and that she did not see anyone else in the truck.

Kerry explained that after the other driver failed to stop, they called the police, and with the assistance of a witness to the accident, they located the truck, which was parked in a driveway. According to Kerry, the truck was parked approximately a quarter mile from where the accident occurred. Kerry testified that when they located the truck, which took five or ten minutes, she recognized it and noticed it

was damaged on the front driver's side. Kerry also testified that the driver, who was sitting inside the truck, was slumped over the steering wheel like he was either unconscious or asleep. Kerry explained that they waited about ten or fifteen minutes for the police to arrive.

Robert Larimore also testified about the details concerning the accident. Robert described the truck as being a "2000 something[]" Ford that was dark blue in color. Robert testified that the driver was an older white male. Robert explained that after the accident, a witness helped them find the truck, which was parked in a driveway. According to Robert, the truck was damaged in the front on the driver's side, and the driver was slumped over the steering wheel when the police arrived. Robert testified that the police had to help the driver out of the truck, and the driver looked like the same person that hit him. Robert identified Woods as the driver.

Sergeant Ron Willingham testified that in February 2015, he was called out to locate a vehicle that had failed to stop and give information following a crash, and that within approximately eight minutes he was on the scene where the vehicle was located. Willingham testified that he met with the Larimores, and they pointed out the vehicle that had caused the accident. Willingham explained that when he approached the vehicle, he observed a white male sitting in the vehicle along with a small dog. According to Willingham, the man was in the driver's seat with his eyes

closed, and he was nonresponsive to Willingham's commands. Willingham testified that the truck was turned off, but the keys were still in the ignition. Willingham noticed that there was damage to the driver's side mirror and to the left side of the vehicle. Willingham identified Woods as the driver of the vehicle. Willingham testified that when he asked Woods what had happened to his vehicle, Woods stated that there was nothing wrong with his mirror and that his truck was perfectly fine.

While talking with Woods, Willingham testified that he smelled a strong odor of alcohol coming from the vehicle. Willingham explained that he tried to get Woods out of the vehicle, but Woods said that he did not think he could walk. Willingham testified that Woods was unsteady and could not get out of the truck. According to Willingham, he had Woods stay in the vehicle until a trooper arrived to conduct an investigation. Willingham testified that while he did not see Woods drinking alcohol, he observed a pint-sized bottle of whiskey lying on the driver's side floorboard.

Trooper Kyle Purnell testified that during his investigation of the two-vehicle crash, he made contact with Willingham, the Larimores, and Woods to see what had happened. Purnell testified that he is trained to investigate crash scenes, and after looking at the damage to both vehicles, he determined that the damage matched the Larimores' account of the accident. Purnell also explained that a crash, like the one the Larimores described as having occurred, is capable of causing serious bodily

injury or death. Purnell testified that he videotaped his investigation, and the videotape was admitted into evidence.

Purnell explained that he found Woods in the driver's seat, Woods never claimed that someone else had been driving that night, and that Woods reported that he had come from some property on Mexican Road. Purnell testified that there was no indication on scene that someone else had driven Woods to his house or dropped him off there. According to Purnell, Woods seemed highly intoxicated and reported that nothing had happened.

Purnell testified that Woods gave conflicting accounts of how much he had to drink. First, Woods reported that he had consumed three or four beers, but later, he reported that he drank a pint of whiskey in his driveway. Purnell testified that Woods had trouble getting out of his vehicle, and Purnell described Woods as being "off balance[.]" Purnell observed that Woods had slurred speech, describing it as thick and slowed. According to Purnell, Woods said that he was intoxicated, but claimed that he was drunk in his driveway. Purnell testified that he conducted the standardized field sobriety test, and based on what he observed, he determined that Woods was intoxicated.

According to Purnell, Woods claimed he was unable to perform the walk and turn and the one-leg stand tests due to a prior medical injury, and Woods's

performance on the alphabet test was incomprehensible. Purnell explained that Woods also failed the finger count test. Purnell determined that Woods was “[h]ighly intoxicated[,]” and arrested Woods for driving while intoxicated and failure to stop and render aid. According to Purnell, after Woods refused to provide a specimen of his blood, Purnell got a search warrant and took Woods to the hospital to have a qualified technician draw Woods’s blood.

Joel Jordan, a registered nurse, testified that he performed Woods’s hospital blood draw, and he explained the procedures he followed. Brian Nacu, the laboratory manager for the Texas Department of Public Safety Crime Laboratory in Corpus Christi, Texas, testified that in February 2015, he was working as a forensic scientist with the Texas Department of Public Safety Crime Laboratory in Houston. Nacu testified that he performed the blood alcohol analysis on Woods’s blood sample and found that Woods’s blood contained 0.269 grams of alcohol for 100 milliliters of blood, which is approximately three times the legal limit.

ANALYSIS

Woods argues that the trial court erred by denying his motion for directed verdict because the evidence is insufficient to support his conviction for driving while intoxicated. We treat Woods’s complaint as a challenge to the legal sufficiency of the evidence. *See Williams v. State*, 937 S.W.2d 479, 482 (Tex. Crim. App. 1996).

The legal-sufficiency standard set forth in *Jackson v. Virginia* is the only standard that a reviewing court should apply in determining whether the evidence is sufficient to support each element of a criminal offense that the State is required to prove beyond a reasonable doubt. *Brooks v. State*, 323 S.W.3d 893, 895 (Tex. Crim. App. 2010). We assess all the evidence in the light most favorable to the prosecution to determine whether any rational trier of fact could find the essential elements of the crime beyond a reasonable doubt. *Jackson v. Virginia*, 443 U.S. 307, 318-19 (1979); *Hooper v. State*, 214 S.W.3d 9, 13 (Tex. Crim. App. 2007). We give deference to the jury's responsibility to fairly resolve conflicting testimony, to weigh the evidence, and to draw reasonable inferences from basic facts to ultimate facts. *Hooper*, 214 S.W.3d at 13.

A person commits the offense of driving while intoxicated when the person is intoxicated while operating a motor vehicle in a public place. Tex. Penal Code Ann. § 49.04(a) (West Supp. 2016). A person is intoxicated when he does not have the normal use of his mental or physical faculties by reason of the introduction of alcohol into the body, or by having an alcohol concentration of 0.08 or more. *Id.* § 49.01(2)(A), (B) (West 2011). An officer need not observe an individual actually driving a vehicle to develop probable cause to believe the individual had actually been driving while intoxicated. *Tex. Dep't of Pub. Safety v. Allocca*, 301 S.W.3d

364, 369 (Tex. App.—Austin 2009, pet. denied); see *Dep't of Pub. Safety v. Hirschman*, 169 S.W.3d 331, 340 (Tex. App.—Waco 2005, pet. denied). “[T]he mere act of sitting in a legally parked vehicle while intoxicated does not necessarily establish probable cause absent some other factor, such as a recent collision or bystander reports, indicating that the accused actually drove the vehicle.” *Allocca*, 301 S.W.3d at 369. While there must be a temporal link between the defendant’s intoxication and the operation of the vehicle, a conviction for the offense of driving while intoxicated may be supported solely by circumstantial evidence, which is as probative as direct evidence. *Kuciemba v. State*, 310 S.W.3d 460, 462 (Tex. Crim. App. 2010); *Scillitani v. State*, 343 S.W.3d 914, 917 (Tex. App.—Houston [14th Dist.] 2011, pet. ref’d). Based upon the combined and cumulative force of all the evidence, a factfinder may reasonably infer that the defendant operated a motor vehicle in a public place while intoxicated. *Murray v. State*, 457 S.W.3d 446, 448-49 (Tex. Crim. App. 2015).

A deadly weapon includes anything that in the manner of its use or intended use is capable of causing death or serious bodily injury. Tex. Penal Code Ann. § 1.07(a)(17)(B) (West Supp. 2016). When evaluating the deadly weapon issue in a driving while intoxicated case, we consider (1) the manner in which the defendant used the motor vehicle during the felony; and (2) whether, during the felony, the

motor vehicle was capable of causing death or serious bodily injury. *Sierra v. State*, 280 S.W.3d 250, 255 (Tex. Crim. App. 2009). Regarding the manner in which Woods used his vehicle during commission of the offense, we consider factors such as (1) intoxication; (2) speeding; (3) driving erratically; and (4) failure to control the vehicle. *See Foley v. State*, 327 S.W.3d 907, 916 (Tex. App.—Corpus Christi 2010, pet. ref'd); *Sierra*, 280 S.W.3d at 255-56.

Woods contends that the evidence is insufficient to support a finding that he was the operator of a motor vehicle in a public place while intoxicated on the day of the accident. The jury heard testimony that Woods struck the Larimores' vehicle, that there was not anyone else in the truck when the accident occurred, the Larimores located Woods's truck a quarter mile from where the accident occurred, the Larimores found Woods sitting in the driver's seat slumped over the steering wheel approximately five to ten minutes after the accident, Woods looked like the driver who caused the accident, the damage to Woods's vehicle matched the damage to the Larimores' vehicle, and there was no indication that anyone other than Woods had been driving the truck that caused the collision. The jury also heard Trooper Purnell testify that the collision that Woods caused was capable of causing serious bodily injury or death.

The jury heard testimony that Woods admitted consuming alcohol on the night of the collision and to being drunk in his driveway. Woods gave differing accounts of the amount and type of alcohol that he consumed, and the police found a pint-sized bottle of whiskey in Woods's truck. The jury heard testimony that Woods was highly intoxicated, could not get out of his vehicle, was off balance, had slurred speech, and smelled of alcohol. The jury also heard testimony that Woods failed the standardized field sobriety test and that Woods's blood contained 0.269 grams of alcohol.

As sole judge of the weight and credibility of the evidence, the jury bore the burden of determining what to believe. *See Hooper*, 214 S.W.3d at 13. In doing so, the jury could reasonably conclude that, based on the recent collision and the Larimores' reports indicating that Woods was the driver of the truck, Woods had actually been driving while intoxicated. *See Murray*, 457 S.W.3d at 448-49. The jury could also reasonably conclude that Woods did not have the normal use of his mental or physical faculties by reason of the introduction of alcohol into his body and that he had an alcohol concentration of 0.08 or more. *See Tex. Penal Code Ann. § 49.01(2)(A), (B)*. Viewing all the evidence in the light most favorable to the jury's verdict, we conclude that a rational jury could find, beyond a reasonable doubt, that Woods committed the offense of driving while intoxicated. *See id.* § 49.04(a); *see*

also Jackson, 443 U.S. at 318-19; *Hooper*, 214 S.W.3d at 13. Under the circumstances of this case, we also conclude that, viewing the evidence in the light most favorable to the verdict, a rational jury could find, beyond a reasonable doubt, that the manner in which Woods used his vehicle when driving while intoxicated was capable of causing death or serious bodily injury. *See* Tex. Penal Code Ann. § 1.07(a)(17)(B); *see also Sierra*, 280 S.W.3d at 255; *Hooper*, 214 S.W.3d at 13. Because the evidence is sufficient to establish, beyond a reasonable doubt, that Woods was driving while intoxicated, we conclude that the trial court did not err by denying Woods's motion for directed verdict. We overrule Woods's sole issue and affirm the trial court's judgment.

AFFIRMED.

STEVE McKEITHEN
Chief Justice

Submitted on August 7, 2017
Opinion Delivered August 30, 2017
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Before McKeithen, C.J., Kreger and Johnson, JJ.