In The
Court of Appeals
Sixth Appellate District of Texas at Texarkana

No. 06-11-00054-CR

PAUL ALLEN GILLILAND, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the County Court at Law
Cass County, Texas
Trial Court No. CCLM100192

Before Morriss, C.J., Carter and Moseley, JJ.
Memorandum Opinion by Justice Carter

MEMORANDUM OPINION

After drinking "a couple beers and a couple cocktails," Paul Allen Gilliland was found asleep in the driver's seat of a Chevrolet pickup truck that had travelled into a ditch beside a state highway and gotten stuck in mud. After a bench trial, Gilliland was convicted of DWI and was sentenced to six months' incarceration in county jail, which was suspended and he was placed on community supervision for two years.[1] Gilliland appeals the trial court's judgment on the sole ground of evidentiary sufficiency. We find that the judgment was supported by legally sufficient evidence. We modify the judgment to reflect Gilliland's plea of not guilty and delete references to a plea agreement. We affirm the judgment as modified.

I. Standard of Review

In evaluating legal sufficiency of the evidence supporting Gilliland's DWI conviction, we review all the evidence in the light most favorable to the verdict to determine whether any rational fact-finder could have found the essential elements of DWI beyond a reasonable doubt. *Brooks v. State*, 323 S.W.3d 893, 912 (Tex. Crim. App. 2010) (citing *Jackson v. Virginia*, 443 U.S. 307, 319 (1979)); *Hartsfield v. State*, 305 S.W.3d 859, 863 (Tex. App.—Texarkana 2010, pet. ref'd) (citing *Clayton v. State*, 235 S.W.3d 772, 778 (Tex. Crim. App. 2007)). Our rigorous legal sufficiency review focuses on the quality of the evidence presented. *Brooks*, 323 S.W.3d at 917 (Cochran, J., concurring). We examine legal sufficiency under the direction of the *Brooks* opinion, while

[1]Additionally, Gilliland was ordered to serve fifteen days in jail as a condition of community supervision. Since he had served seventy-four days prior to trial, credit was given for the jail confinement.

giving deference to the responsibility of the trial judge "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) (citing *Jackson*, 443 U.S. at 318–19).

Legal sufficiency of the evidence is measured by the elements of the offense as defined by a hypothetically correct jury charge. *Malik v. State*, 953 S.W.2d 234, 240 (Tex. Crim. App. 1997); *see Grotti v. State*, 273 S.W.3d 273, 280 (Tex. Crim. App. 2008); *see also Vega v. State*, 267 S.W.3d 912, 916 (Tex. Crim. App. 2008). Under the hypothetically correct jury charge, Gilliland committed the offense of DWI if (1) he (2) operated (3) a motor vehicle (4) in a public place (5) while intoxicated. TEX. PENAL CODE ANN. § 49.04 (West 2011). While Gilliland admits that he operated a motor vehicle, and was intoxicated, he argues that the evidence is insufficient to establish that he was intoxicated at the time he operated the motor vehicle.

II. Facts

After 8:00 p.m. on December 8, 2009, Alfred Eugene Point, the Douglassville fire chief and first responder, was dispatched to a one-car accident on Highway 77 approximately two-tenths of a mile east of the Douglassville city limits. He found the vehicle in park with the engine off, but noticed that the key was in the ignition. State Trooper Jonathan Daniel Britton, who arrived shortly thereafter, concluded that the vehicle Gilliland was sitting in had spun out of control, did a turnover in the roadway and rolled backward down into the embankment. When Britton arrived, the vehicle's headlights were turned on and were "still bright so I knew that the vehicle had been

recently driven because if the vehicle had been down there all afternoon and all evening the headlights would not be as bright as they were." Britton found "freshly made tire tracks" from the vehicle in the mud. Point smelled alcohol in the vehicle. He woke the sleeping Gilliland, who "beg[an] to curse [him]." Britton approached Gilliland, who "got irate with [Point] because he thought I called the law." Britton testified that he "could smell the strong odor of alcohol. I observed that his eyes were watery, had a glassy appearance to them." Gilliland admitted to ingesting alcohol. When asked if he was driving, Gilliland claimed that his friend "Bill was driving the vehicle, [and] that he was just out looking for his dog," but no one else was found with Gilliland at the scene. The "passenger seat was scooted forward," and Britton testified a person of Gilliland's "six foot three, 280" pound "build could not have fit in that passenger seat." Further, Douglas Bill Heath testified that he saw Gilliland driving on the day of the incident and that he was alone. Heath testified that his father, Bill, was not driving the truck and could not have driven the truck for medical reasons.

When Gilliland exited the vehicle he "backhanded" Britton. Gilliland also "hit [Point] over the head with [a] bottle of water." He was then subdued and arrested. In the vehicle, Britton found "an orange prescription bottle issued to Bill Heath for Hydrocodone that only had one pill left in the bottle," as well as "two 30-packs of beer in the bed of the truck," which appeared to be "freshly purchased" because the "condensation on it" and the beer was "very cold to the touch." Gilliland claimed he was injured and was taken to the hospital for assessment of alleged

injuries and to obtain a blood sample; he refused to co-operate in field sobriety tests. Britton testified, "At one point one of the nurses was taking him down to the x-ray room. I was following behind. Mr. Gilliland was not aware that I was there and he made comments to the nurse that led me to continue to believe that he was actually operating that vehicle at the time of the crash." Gilliland told the "nurse about how he was out driving around looking for his little dog, Pepper, and that he had slid off the road." His blood sample contained "0.17 grams of alcohol per 100 milliliters of blood."

In light of this evidence, Gilliland testified and admitted he was driving the vehicle. He also did not challenge the fact of his intoxication. But, Gilliland testified that he "opened up a bottle" of whiskey and started drinking after he became stuck in the ditch, which occurred between 2:30 and 3:00 in the afternoon. Gilliland claimed that he was on the side of the highway "asleep in that truck for at least four or five hours." He said, "[T]hen when I figured out I was going, you know, to jail I had filled up a flask in the back of the deal and I drank all the way to that hospital." Britton testified that there were no open containers of alcohol in the truck and that the only thing Gilliland drank between the time he encountered him and his trip to the hospital was a bottle of water. Further, while Gilliland testified at trial he was only drinking whiskey, he had told the officers that he had had "a couple beers and a couple cocktails." As the sole judge of credibility of the witnesses and testimony, the trial judge could have disregarded Gilliland's claims.

III. Linkage of Driving and Intoxication

As far as the argument that there was no "temporal link between" the driving and the intoxication, Gilliland was sitting in the driver's seat of a vehicle that had veered off the roadway and wedged into bushes so that the driver's door was not serviceable, the lights on the car were on and were still bright, indicating that the battery had not degraded, and tire tracks were freshly made and had not been washed away by the rain. Further, the only alcoholic beverage or containers found at the scene were the unopened containers of beer. Rather than believing Gilliland's testimony that he drank a bottle of whiskey at the scene and from a flask while in the ambulance, the trial court had the discretion to infer that Gilliland did not have "the means or opportunity of ingesting alcohol from the time he lost control of the [truck] until the officer found him," suggesting that Gilliland was intoxicated while operating the vehicle. *Kuciemba v. State*, 310 S.W.3d 460, 463 (Tex. Crim. App. 2010). Finally, the Texas Court of Criminal Appeals has made it clear that "[b]eing intoxicated at the scene of a traffic accident in which the actor was a driver is some circumstantial evidence that the actor's intoxication caused the accident, and the inference of causation is even stronger when the accident is a one-car collision with an inanimate object." *Id.*; *see Scillitanti v. State*, 315 S.W.3d 542 (Tex. Crim. App. 2010) (per curiam). "A conviction can be supported solely by circumstantial evidence." *Kuciemba*, 310 S.W.3d at 462. We find the evidence was legally sufficient to support Gilliland's DWI conviction. Gilliland's sole point of error is overruled.

IV. Reform Judgment

The Texas Rules of Appellate Procedure give this Court authority to reform judgments and correct typographical errors to make the record speak the truth. TEX. R. APP. P. 43.2; *French v. State*, 830 S.W.2d 607, 609 (Tex. Crim. App. 1992); *Rhoten v. State*, 299 S.W.3d 349, 356 (Tex. App.—Texarkana 2009, no pet.). "Our authority to reform incorrect judgments is not dependent on the request of any party, nor does it turn on a question of whether a party has or has not objected in trial court; we may act sua sponte and may have a duty to do so." *Rhoten*, 299 S.W.3d at 356 (citing *Asberry v. State*, 813 S.W.2d 526, 531 (Tex. App.—Dallas 1991, pet. ref'd)). The judgment in this case reflects that Gilliland pled guilty to the offense and that a plea bargain was reached in this case. This was incorrect. Gilliland pled "[n]ot guilty" and specifically rejected a negotiated plea of guilty. We modify the judgment to reflect Gilliland's plea of "[n]ot guilty" and delete references to a plea bargain.

We affirm the trial court's judgment as modified.

Jack Carter
Justice

Date Submitted: August 29, 2011
Date Decided: September 2, 2011

Do Not Publish