

**Affirm and Opinion filed November 10, 1999.**



**In The**  
**Fourteenth Court of Appeals**

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**NO. 14-97-01020-CR**

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**PATRICK E. SMITH, Appellant**

**V.**

**THE STATE OF TEXAS, Appellee**

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**On Appeal from the County Criminal Court at Law No. 12  
Harris County, Texas  
Trial Court Cause No. 97-17428**

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**OPINION**

Appellant, Patrick E. Smith, appeals his conviction for driving while intoxicated. TEX. PEN. CODE ANN. § 49.04 (Vernon 1994). Following a jury trial, the court assessed his punishment at confinement for 180 days' in the Harris County Jail, probated for one year, and assessed a fine of \$750. In his sole point of error, appellant contends that the evidence was legally insufficient to support his conviction. We affirm the trial court's judgment.

Appellant contends that the evidence was not legally sufficient because the State failed to prove that he had lost the normal use of his mental or physical faculties at the time he was driving his car. When reviewing the legal sufficiency of the evidence, we look at the evidence in the light most favorable to the verdict and determine whether any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. *See Jackson v. Virginia*, 443 U.S. 307, 319, 99 S.Ct. 2781, 61 L.Ed.2d 560 (1979); *Mason v. State*, 905 S.W.2d 570, 574 (Tex. Crim. App. 1995). The jury is the exclusive judge of the credibility of witnesses and of the weight to be given their testimony. *See Jones v. State*, 944 S.W.2d 642, 647 (Tex.Crim.App.1996). Likewise, reconciliation of conflicts in the evidence is within the exclusive province of the jury. *Id.*

The record shows that appellant was driving to a friend's house from a bar at approximately 2:30 a.m. Appellant admitted to drinking two beers and a mixed drink. Harris County Sheriff's Deputy Jimmie Cook saw appellant driving, and noticed that one of appellant's front tires was missing. Appellant was driving on the metal rim, which created sparks when contacting the road. The car was also swerving.

After Deputy Cook stopped appellant, appellant stumbled out of his car. Cook noticed a strong odor of alcohol coming from appellant's breath. Cook also saw a bottle of vodka that was three quarters empty. Appellant's speech was slurred, and his eyes were bloodshot. Deputy Cook asked appellant to perform several field sobriety test. According to Cook, appellant did not perform any test because he did not cooperate. Appellant was arrested and taken to the Wallisville substation.

At the substation, appellant attempted to give a sample of his breath, but was unable to follow the proper procedure. He gave two invalid samples. Appellant was then videotaped while performing several field sobriety tests. Deputy Cook believed that appellant still exhibited signs of intoxication. Based on all of his observations, Deputy

Cook testified that in his opinion appellant had lost the normal use of his mental and physical faculties while operating a motor vehicle.

We hold that the evidence is legally sufficient to support appellant's conviction. We overrule appellant's sole point of error.

The judgment of the trial court is affirmed.

/s/ Ross A. Sears  
Justice

Judgment rendered and Opinion filed November 10, 1999.

Panel consists of Justices Sears, Cannon, and Draughn.\*

Do Not Publish — TEX. R. APP. P. 47.3(b).

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\* Senior Justices Ross A. Sears, Bill Cannon, and Joe L. Draughn sitting by assignment.