IN THE MUNICIPAL COURT OF APPEALS
OF THE CITY OF EL PASO, TEXAS

CHRISTIAN MICHAEL FRANCLEMONT	§	
Appellant,	§	**No. 23-MCA-4044** **Court No. 21-150545**
v.	§	
STATE OF TEXAS	§	
Appellee.	§	

OPINION

Appellant was cited on April 25, 2022, for public intoxication. All issues were submitted to the trial court and a record was requested that is part of the Clerk's Record. Appellant was found guilty and assessed a fine of $20.00, court costs of $81.00 and a $5.00 arrest.

SOLE ISSUE

The case was heard on August 1, 2022. The sole issue before this Court is whether the evidence is legally and factually sufficient to support the trial court finding Appellant guilty of public intoxication and whether the trial court committed reversible error in its application of the law. For the stated reasons herein, this Court affirms the trial court's judgment.

STANDARD OF REVIEW

This Court reviews legal and factual sufficiency challenges using the same standard of review. *Ervin v. State*, 331 S.W.3d 49, 54 (Tex.App.-Houston [1st Dist.] 2010, pet. ref'd). Under this standard, evidence is insufficient to support a conviction if, considering all the record evidence in the light most favorable to the verdict, no rational factfinder could have found that each essential element of the charged offense was proven beyond a reasonable doubt. "Viewed in the light most favorable to the verdict, the evidence is insufficient under this standard in two circumstances: (1)

the record contains no evidence, or merely a "modicum" of evidence, probative of an element of the offense; or (2) the evidence conclusively establishes a reasonable doubt." *Kiffe v. State,* 361 S.W.3d 104, 107 (Tex. App. 2012) "Additionally, the evidence is insufficient as a matter of law if the acts alleged do not constitute the criminal offense charged." *Id.*, at 108.

An appellate court gives great deference to the fact-finder and resolves any conflicting inferences in favor of the verdict. An appellate court also defers to the fact-finder's evaluation of the credibility and weight of the evidence. *Id.*, at 108.

A person is guilty of public intoxication "if the person unlawfully appeared in a public place while intoxicated to the degree that the person may endanger the person or another." Tex. Penal Code Ann. § 49.02

ANALYSIS

Appellant first claims he was not Mirandized, refused a telephone call, denied an attorney, and was not administered a breathalyzer exam. All of these complaints are not defenses to the offense of public intoxication. Police Officers are not required to *Mirandize* defendants unless they are interrogated. Although a defendant has a right to be represented by an attorney during an interrogation and trial, defendants do not have a right to call an attorney while they are being arrested and *Miranda* does not include a right to make a telephone call. Likewise, a breathalyzer exam is not a prerequisite when defendants are arrested for public intoxication. *See Annis v. State*, 578 S.W.2d 406, 407 (Tex.Crim.App.1979). And Officer Contreras explained Appellant would get the opportunity to place a telephone call once he arrived at the jail. *See Miranda v. Arizona*, 384 U.S. 436 (1966).

The trial court did not err by not considering Appellant's defenses.[1] Further, the evidence is legally and factually sufficient to support a finding of guilt beyond a reasonable doubt.

Appellant claims that the evidence was insufficient to prove he was drunk.[2] For purposes of the statute, proving an exact intoxicant is not an element of the offense. A lack of balance and smell of alcohol can prove intoxication. *See Griffith v. State*, 55 S.W.3d 598, 601 (Tex.Crim.App.2001) ("The definition of 'intoxicated' includes 'not having the normal use of mental or physical faculties,' (quoting Tex. Penal Code § 49.01(2)(A)).

As a general rule, the testimony of an officer that a person is intoxicated provides sufficient evidence to establish the element of intoxication. *See Annis v. State*, 578 S.W.2d 406, 407 (Tex.Crim.App.1979) (reasoning that officer's testimony that person was intoxicated provided sufficient evidence to establish element of intoxication); see also *Henderson v. State*, 29 S.W.3d 616, 622 (Tex.App.-Houston [1st Dist.] 2000, pet. ref'd) (stating that the testimony of a police officer that individual is intoxicated is probative evidence of intoxication).

Officer Contreras testified she was dispatched to Jaguars Club on April 25, 2022, regarding a disturbance and a subject running into traffic on I-10. When Officer Contreras arrived at Jaguars, she witnessed Appellant being escorted from I-10 to the median between I-10 and Gateway West in handcuffs by security guards from Jaguars. Appellant had been tased by security officers because Appellant was running into traffic on I-10. Officer Contreras observed Appellant to be intoxicated, yelling and resisting attempts to subdue him.

Officer Contreras testified she is familiar with the signs exhibited when an individual is intoxicated, and Appellant exhibited those signs. Appellant smelled of alcohol, had red blood shut

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[1] The City did not file a brief in support of the judgment nor object to the Clerk's record.

[2] Appellant confuses intoxication with drunkenness. Texas law including the Texas Penal Code Section 49.02 does not require the City prove Appellant was drunk but only requires Appellant was intoxicated not having the normal use of mental or physical faculties and that Appellant posed a danger to himself or others.

eyes and was having difficulty keeping his balance. To Officer Contreras, Appellant was intoxicated to the degree Appellant posed a danger to himself and others.

According to Officer Contreras, Appellant was running towards I-10 while telling Jaguars security guards he was going to run in front of semi-trucks. From Officer Contreras' observations, Appellant was a danger to himself as he was actively trying to run into oncoming traffic. Officer Contreras smelled an unknown alcoholic beverage in the Appellant's breath. Appellant's friend refused to take Appellant home because she was afraid of him because he was highly intoxicated.

Appellant was arrested for public intoxication for his safety. Appellant screamed and kicked during the entire trip from Jaguars Club to the police station.

On cross-examination, Appellant asked Officer Contreras how he would be able to run away if he was subdued and handcuffed. Officer Contreras responded that Appellant attempted to run even while the officers were attempting to place him in the police vehicle. While under arrest, the police officers had to take Appellant's boots off and shackle his legs to subdue him once at the police station. Officer Contreras believed Appellant was intoxicated and a danger to himself because he was running into oncoming traffic on I-10.

Not only is Officer Contreras' testimony sufficient to support proof beyond a reasonable doubt, but Appellant's testimony also supports a finding of guilt.

Appellant testified he was at the strip club for a friend's birthday. At one point during the night, Appellant was told to leave by the security guards at the Jaguars Club. According to Appellant he was compliant but was tased and tackled on the stage by 10 security guards but was able to leave Jaguars Club and sit outside the club.

Appellant demanded the security guards call the police to complain of the security guard's treatment and when they refused to do so, Appellant was going to force the security guards to call

the police by running into oncoming traffic on I-10. Appellant's rationale was once hit by oncoming traffic, the security guards would be charged with manslaughter.

Appellant's boss was called in an attempt to reason with Appellant about this dangerous behavior, but Appellant told his boss, "he knew what he was doing." Appellant testified he was tased several times and handcuffed when the police officers arrived. Appellant could not have been drunk as he only had 6 drinks between 7 p.m. and 3:00 a.m.

Appellant insisted he was not drunk in public and if he had the opportunity to call an attorney, the attorney would arrive and tell the police officers Appellant was not drunk and Appellant would have to be released. But as Appellant was not given that opportunity, he was kicking and screaming until an attorney was called.

On cross-examination, Appellant denied he told the police officer he was drunk and "pissed." Appellant believes he was sober and admits was extremely belligerent but calm and did not fight anybody and was going after the police officer's jobs because the police officers did not press charges against the security guards for using a Taser. Appellant also admits he ran onto I-10 because this was the only way the police would be called.

Appellant's friends did not appear in court because one friend was very drunk during the incident, and the other friend would have testified to Appellant's version of the events on that night.

After reviewing the evidence in the record in the light most favorable to the verdict and having considered Appellant's brief, the evidence is legally and factually sufficient to prove each element of the offense beyond a reasonable doubt.

CONCLUSION

Having found no error of law and the evidence legally and factually sufficient, the trial court's judgment of guilt is affirmed.

SIGNED this 29th day of September, 2023.

MARIA B. RAMIREZ, Judge
El Paso Municipal Court of Appeals

JUDGMENT

The same being considered, is the opinion of this Court that there was no error in the Judgment, it is ORDERED, ADJUDGED and DECREED by the Court that the Judgment be in all things affirmed, and Appellant pay all costs in his behalf expended, and this decision be certified below for observance.

MARIA B. RAMIREZ, Judge
El Paso Municipal Court of Appeals