

COURT OF APPEALS OF TEXAS, SECOND APPELLATE DISTRICT AT FORT WORTH

Philip Jafarosman Kury v. the State of Texas

No. 02-19-00417-CR (Tex. App.—Fort Worth May 6, 2021) (mem. op.) · No. No. 02-19-00417-CR · Decided May 6, 2021

SUMMARY

The Texas Court of Appeals, Second Appellate District, affirmed Philip Jafarosman Kury’s misdemeanor DWI conviction and 225-day jail sentence. The court held that the evidence sufficiently established that Kury operated a vehicle while intoxicated and that the warrant-authorized blood draw was conducted reasonably under the Fourth Amendment.

CASE DETAILS

COURT	Court of Appeals of Texas, Second Appellate District at Fort Worth
WRITING FOR THE COURT	Dabney Bassel; Bassel; Wallach; Walker
JURISDICTION	Texas
DECIDED	May 6, 2021
DOCKET	No. 02-19-00417-CR
DISPOSITION	affirmed
PROCEDURAL POSTURE	Kury appealed his misdemeanor DWI conviction and enhanced sentence, challenging the sufficiency of the evidence and the denial of his motion to suppress blood-test evidence.
STANDARD OF REVIEW	The court reviewed sufficiency of the evidence under the Jackson v. Virginia standard, viewing all evidence in the light most favorable to the verdict and asking whether any rational factfinder could have found the essential elements beyond a reasonable doubt. It reviewed the suppression ruling under a bifurcated standard, deferring to historical-fact and credibility determinations while reviewing de novo application-of-law-to-fact questions not dependent on credibility or demeanor.
PRECEDENTIAL VALUE	nonprecedential
PARTIES	Philip Jafarosman Kury v. The State of Texas

TOPICS

criminal procedure

evidence

fourth amendment

search and seizure

appellate procedure

PRACTICE AREAS

criminal law

criminal procedure

DWI

QUESTIONS PRESENTED

1. Whether the evidence was sufficient to prove that Kury operated a motor vehicle in a public place while intoxicated.
2. Whether the evidence was sufficient to prove that Kury was intoxicated while operating the vehicle despite the absence of retrograde-extrapolation testimony.
3. Whether the trial court erred under the Fourth Amendment by denying suppression of the blood-test evidence because the manner and procedures of the warrant-authorized blood draw were unreasonable.

HOLDINGS

1. The evidence was sufficient for a rational jury to find that Kury operated the vehicle because he exited from the driver's seat, the vehicle had recently been seen driving, it was running in a traffic lane, Kury said he stopped because of brake trouble, and he admitted he was the driver.
2. The evidence was sufficient to establish beyond a reasonable doubt that Kury was intoxicated while operating the vehicle under both impairment and per se theories, even without retrograde-extrapolation testimony.
3. The blood draw was reasonable under the totality of the circumstances, and the trial court properly denied suppression.

KEY QUOTATIONS

“we review the sufficiency of the evidence establishing the elements of a criminal offense under the single sufficiency standard set out in Jackson v. Virginia.” (at 3)

“while driving does involve operation, operation does not necessarily involve driving.” (at 4)

“A two-part test exists to determine whether a blood draw is reasonable” (at 10)

FACTUAL BACKGROUND

Kury was found after officers observed him exit the driver's seat of a running vehicle stopped in a traffic lane. He admitted that he had driven the vehicle and had consumed three beers; officers also observed bloodshot watery eyes, an odor of alcohol, slurred speech, erratic behavior, and refusal to perform field sobriety tests. After his arrest, a warrant-authorized blood draw at a hospital showed a blood-alcohol concentration of 0.209, and Kury challenged the reasonableness of the draw based on alleged sanitary and procedural shortcomings.

PROCEDURAL HISTORY

Kury was charged with misdemeanor driving while intoxicated, enhanced by a prior DWI conviction. He pleaded not guilty and was convicted by a jury; he pleaded true to the enhancement, and the trial court assessed 225 days in the Tarrant County Jail. The trial court denied Kury's motion to suppress evidence from the blood draw, and the court of appeals affirmed.

DISPOSITION

affirmed

CASES CITED

- Jackson v. Virginia, 443 U.S. 307, 316, 319 (1979)
- Brooks v. State, 323 S.W.3d 893, 912 (Tex. Crim. App. 2010)
- Clewis v. State, 922 S.W.2d 126 (Tex. Crim. App. 1996)
- Acosta v. State, 429 S.W.3d 621, 624 (Tex. Crim. App. 2014)
- Queeman v. State, 520 S.W.3d 616, 622 (Tex. Crim. App. 2017)
- Kuciemba v. State, 310 S.W.3d 460, 462 (Tex. Crim. App. 2010)
- Denton v. State, 911 S.W.2d 388, 389-90 (Tex. Crim. App. 1995)
- Priego v. State, 457 S.W.3d 565, 569 (Tex. App.—Texarkana 2015, pet. ref'd)
- Smith v. State, 401 S.W.3d 915, 919 (Tex. App.—Texarkana 2013, pet. ref'd)
- Strong v. State, 87 S.W.3d 206, 215 (Tex. App.—Dallas 2002, pet. ref'd)
- Pfeiffer v. State, 363 S.W.3d 594 (Tex. Crim. App. 2012)
- Harrell v. State, No. PD-0985-19, 2021 WL 1556073, at *2 (Tex. Crim. App. Apr. 21, 2021)
- Dansby v. State, 530 S.W.3d 213, 228 (Tex. App.—Tyler 2017, pet. ref'd)
- State v. Mechler, 153 S.W.3d 435, 437, 441 (Tex. Crim. App. 2005)
- Kirsch v. State, 306 S.W.3d 738, 743 (Tex. Crim. App. 2010)
- Amador v. State, 221 S.W.3d 666, 673 (Tex. Crim. App. 2007)
- Guzman v. State, 955 S.W.2d 85, 89 (Tex. Crim. App. 1997)
- Estrada v. State, 154 S.W.3d 604, 607 (Tex. Crim. App. 2005)
- Johnson v. State, 68 S.W.3d 644, 652-53 (Tex. Crim. App. 2002)
- Schmerber v. California, 384 U.S. 757, 767 (1966)
- Pacheco v. State, 347 S.W.3d 849, 853 (Tex. App.—Fort Worth 2011, no pet.)
- State v. Johnston, 336 S.W.3d 649, 658-61 (Tex. Crim. App. 2011)
- Siddiq v. State, 502 S.W.3d 387, 398-403 (Tex. App.—Fort Worth 2016, no pet.)
- Beeman v. State, 86 S.W.3d 613, 615-16 (Tex. Crim. App. 2002)