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TIBA TEXAS INDEPENDENT BAR ASSOCIATION

Post Office Box 783
Austin, Texas 78767
Tel. 512-354-7823
Fax: 512-532-6282



Web Site: www.texindbar.org

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TIBA's Case of the Week

Case Name: [Chad William Murray v. The State of Texas](#)

- OFFENSE: Driving While Intoxicated
- COUNTY: Hill
- COURT OF APPEALS: Amarillo 2014
- C/A CITATION: 440 S.W.3d 927
- C/A RESULT: Conviction Reversed
- CCA. CASE No. PD-1230-14 DATE OF OPINION: April 15, 2015
- DISPOSITION: Court of Appeals Reversed
- OPINION: [Hervey, J.](#) VOTE: 8-1
- TRIAL COURT: 68th D/C; Hon. Bob McGregor
- LAWYERS: [Michael Mowla](#) (Defense); [John Messinger](#) (State)

⚖ 534 **Sufficiency of the Evidence:** On January 16, 2011, between approximately 1:00 a.m. and 2:00 a.m., Deputy James McClanahan of the Hill County Sheriff's Office was driving on Highway 22 when he saw Appellant's black truck parked on the side of the road. The vehicle, with its headlights on, was parked partially on an improved shoulder and partially in a driveway near a fireworks stand. The officer believed that the engine was running because, due to the cold weather, he could see exhaust vapors leaving the tailpipe of the truck, but he could not see anyone in the vehicle as he drove past it. Because the fireworks stand near Appellant's truck had been broken into recently, Deputy McClanahan suspected that Appellant may have been attempting to steal fireworks, so he parked and approached Appellant's truck on foot. As he neared the vehicle, he saw Appellant reclined in the driver's seat asleep. He also confirmed that the engine was running, the truck transmission was in the "park" position, and the radio was on with the volume turned up. Because of the volume of the radio, McClanahan had to "beat" on the driver's side window for a few minutes to rouse Appellant. Once awake, Appellant rolled down the window, and Deputy McClanahan immediately smelled alcohol in the truck. He also noted that Appellant appeared very intoxicated, his movements were sluggish, and his speech was impaired. He asked Appellant whether he had been drinking alcohol, and Appellant responded that "he'd had a little." There was no one else in Appellant's vehicle or anyone near the area, and no alcoholic substances or containers were found in the vicinity. The Court of Appeals reversed Appellant's conviction, holding that "no direct or

circumstantial evidence appears of record enabling a reasonable fact finder to infer that Appellant operated his vehicle while intoxicated” (see [68](#), [Vol. 22, No. 27](#); 07/07/2014).

Holding: Based on Appellant’s admission that he had been drinking, McClanahan’s observation that Appellant appeared “very intoxicated,” and the fact that no alcoholic beverages were found in the vicinity, a factfinder could have reasonably inferred that Appellant consumed alcoholic beverages to the point of intoxication somewhere other than where he was found. Furthermore, because Appellant was the only person found in the area, a factfinder could have also reasonably inferred that Appellant drove his vehicle to the location at which he was found after drinking to intoxication. *** When the evidence is viewed in the light most favorable to the State, a rational factfinder could have found that Appellant operated his vehicle while intoxicated. Consequently, we hold that the evidence in this case was legally sufficient to sustain the jury’s finding that Appellant operated his vehicle.

Sidebars: ([David A. Schulman](#)) The Court began by stating that the “sole question for review” was whether “a driver who is passed out behind the wheel of a running vehicle ‘operating’ it for the purposes of DWI?” Whatever else is clear here is that the Court did not answer that question, unless it answered it in the negative sub silentio. So long as one reads this opinion to mean that the answer to the question is “no,” then it makes perfect sense, as it impliedly categorizes this as a circumstantial evidence case. While the Court of Appeals’ opinion held that there was neither direct nor circumstantial evidence that Appellant was operating his vehicle while intoxicated, I would have to disagree, because, as this opinion proves, there was plenty of circumstantial evidence that he had done just that.