COURT OF APPEALS
SECOND DISTRICT OF TEXAS
FORT WORTH

NO. 02-16-00196-CR

CHRISTOPHER DEAN MORRIS — APPELLANT

V.

THE STATE OF TEXAS — STATE

FROM THE 43RD DISTRICT COURT OF PARKER COUNTY
TRIAL COURT NO. CR16-0027

MEMORANDUM OPINION[1]

In a single point, Appellant Christopher Dean Morris appeals his conviction for burglary of a habitation. *See* Tex. Penal Code Ann. § 30.02 (West 2011). We affirm.

[1]*See* Tex. R. App. P. 47.4.

Background

On December 28, 2015, as he was getting ready to go to bed, Travis Placke noticed a suspicious vehicle near his neighbor's home. According to Placke, the driver had pulled the car up to the house and was shining its headlights in "just random directions, like they were looking at everything." Placke telephoned the homeowner, Robert Ard, who happened to be en route to his home at that moment, and told him what he had observed. While Ard was still speaking to Placke on the phone, he arrived at his home and saw the vehicle in his driveway.

Ard was not expecting any visitors that evening and did not recognize the vehicle. Concerned because he kept loaded firearms in the home, Ard asked Placke to come over to his house and help him. Ard then called 9-1-1 to report the suspicious vehicle.

Carrying his rifle and a flashlight with him, Placke walked to Ard's house and they inspected the unfamiliar vehicle, a green Camry. Placke and Ard observed items inside the Camry that belonged to Ard, including clothing and a shotgun. The two also noticed footprints in the fresh snow that indicated to them that someone had walked over to Ard's pickup truck parked in the driveway. It also appeared to them that the toolbox in the back of the pickup truck had been opened. The lights were on inside Ard's home, the back door was open, and the window blinds had been moved as if to enable someone to look out of the house.

From outside the window, they also noticed a shadow moving inside. Ard called 9-1-1 again.

While awaiting law enforcement officers to arrive, Ard and Placke both yelled at the person inside the house and ordered him to come out. Eventually, Appellant emerged from the house, and, at Placke's direction, he lay face down on the ground. Placke testified that he became nervous because Appellant would sometimes hide his hands underneath his body, so eventually Placke allowed Appellant to get up and take a seat on the steps of the house, but Placke kept his rifle aimed at Appellant while they awaited the arrival of law enforcement officers. When Parker County deputy sheriffs arrived, the officers placed Appellant under arrest. He was later charged with burglary of a habitation.

At trial, Appellant moved to suppress all evidence obtained as a result of Placke and Ard's detention of him, arguing that it was an invalid citizens' arrest. The trial court denied the motion. The jury found Appellant guilty of burglary of a habitation and sentenced him to 20 years' confinement. Appellant argues on appeal that the trial court erred in denying his motion to suppress the evidence gained from Placke and Ard's citizens' arrest.

Standard of Review

We review a trial court's ruling on a motion to suppress evidence under a bifurcated standard of review. *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). We give almost total deference to a trial court's rulings on questions of historical

fact and application-of-law-to-fact questions that turn on an evaluation of credibility and demeanor, but we review de novo application-of-law-to-fact questions that do not turn on credibility and demeanor. *Amador*, 221 S.W.3d at 673; *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).

When, as here, the record is silent regarding the reasons for the trial court's ruling, or when there are no explicit fact findings and neither party timely requested findings and conclusions from the trial court, we imply the necessary fact findings that would support the trial court's ruling if the evidence, viewed in the light most favorable to the trial court's ruling, supports those findings. *State v. Garcia-Cantu*, 253 S.W.3d 236, 241 (Tex. Crim. App. 2008); *see Wiede v. State*, 214 S.W.3d 17, 25 (Tex. Crim. App. 2007). We then review the trial court's legal ruling de novo unless the implied fact findings supported by the record are also dispositive of the legal ruling. *State v. Kelly*, 204 S.W.3d 808, 819 (Tex. Crim. App. 2006).

Citizens' Arrests

Texas law extends to its citizens the right to arrest a criminal suspect. However, a citizen's right to do so is not unfettered. *Miles v. State*, 241 S.W.3d 28, 39 (Tex. Crim. App. 2007). Code of criminal procedure article 14.01(a) provides that an individual may "arrest an offender when the offense is committed in his presence or within his view, if the offense is one classed as a felony or as an offense against the public peace." Tex. Code Crim. Proc. Ann.

art. 14.01(a) (West 2015); *De Leon v. State*, 201 S.W.2d 816, 818 (Tex. Crim. App. 1947). We have held that in order to satisfy the requirement that the offense be "committed in [the citizen's] presence or within his view," the individual must observe enough to establish probable cause that a crime is being committed. *Garner v. State*, 779 S.W.2d 498, 501 (Tex. App.—Fort Worth 1989, pet. ref'd). Burglary of a habitation, an offense committed by entering a habitation with the intent to commit a theft, is a felony offense. Tex. Penal Code Ann. § 30.02(d).

Whether an arrest is made by a citizen or a peace officer, if the arrest is unlawful, evidence obtained as a result of the unlawful arrest is subject to suppression in accordance with the exclusionary rule. Tex. Code Crim. Proc. Ann. art. 38.23 (West 2005); *Jenschke v. State*, 147 S.W.3d 398, 400 (Tex. Crim. App. 2004). Appellant argues that the citizens' arrest here was unlawful and, therefore, that the evidence should be suppressed. Without citing to any authority supporting his argument, Appellant reasons that because neither Placke nor Ard directly observed Appellant taking items from Ard's house and placing them into his car, the two did not "directly observe" the commission of a felony.

We disagree. Even without observing Appellant's act in taking items from the house and placing them into his car, what Placke and Ard observed was sufficient to establish probable cause that Ard's home was being burglarized and to justify a citizen's arrest. As noted above, to meet the standard set by article

14.01(a) that the offense be committed "in [the citizen's] presence or within his view," the individual must have probable cause to believe a crime is being committed. *See Garner*, 779 S.W.2d at 501. The question, then, is not whether Placke and Ard directly observed each element of the offense of burglary of a habitation, but whether they observed enough to establish probable cause that the crime was being committed.

From his own home, Placke observed suspicious activity involving a vehicle parked at Ard's home. At about the same time, Ard arrived home to find an unfamiliar and unexpected vehicle in his driveway. The two then noticed that items belonging to Ard, including his clothing and a firearm, were inside the unfamiliar vehicle. Both men then observed footprints, indicating that someone had entered the back of Ard's pickup truck and opened the toolbox in the back of the truck. Finally, they noticed that the lights were on inside Ard's home, that the back door was open, and that the window blinds had been moved. They also observed a shadow moving from inside the home. This is sufficient evidence to establish probable cause that someone had entered Ard's house with the intent to commit a theft and thus, to justify a citizens' arrest. *See, e.g.*, *Andrade v. State*, 6 S.W.3d 584, 589–90 (Tex. App.—Houston [14th Dist.] 1999, pet. ref'd) (holding offense was directly observed by citizen who made arrest where he came home to a broken window and missing property, saw appellant walking along his property, found the missing property stashed in the bushes in his yard, and subsequently found appellant in his yard, searching through the bushes for

the stolen property); *Burkett v. State*, 760 S.W.2d 345, 346–47 (Tex. Crim. App. 1988) (holding probable cause of burglary existed where tugboat crew conducted citizens' arrest after observing appellant's entry onto a boat at 2:30 a.m. without consent and noting that property was missing).[2] Therefore, the trial court did not err by denying Appellant's motion to suppress.

We overrule Appellant's sole issue.

Conclusion

Having overruled Appellant's only issue on appeal, we affirm the trial court's judgment.

/s/ Bonnie Sudderth
BONNIE SUDDERTH
JUSTICE

PANEL: WALKER, MEIER, and SUDDERTH, JJ.

DO NOT PUBLISH
Tex. R. App. P. 47.2(b)

DELIVERED: February 16, 2017

[2]Because we hold that the citizen's arrest was justified under article 14.01, we do not address the State's assertion that the arrest could have also been justified under article 18.16. Tex. Code Crim. Proc. Ann. art. 18.16 (West 2015) (providing that any person can prevent the consequences of theft by seizing any stolen items and taking them and the suspected thief to a peace officer without delay if there is reasonable ground to believe the property is stolen).