In The
Court of Appeals
Seventh District of Texas at Amarillo

No. 07-23-00239-CR

VICTOR WADE MOSMEYER, APPELLANT

V.

THE STATE OF TEXAS, APPELLEE

On Appeal from the 437th District Court
Bexar County, Texas
Trial Court No. 2021CR11582, Honorable Joel Perez, Presiding

November 17, 2023

MEMORANDUM OPINION

Before QUINN, C.J., and PARKER and YARBROUGH, JJ.

Following a plea of not guilty, Appellant, Victor Wade Mosmeyer, was convicted by a jury of failure to stop and render aid[1] and was sentenced to ten years' confinement. By a sole issue, he contends the evidence is legally insufficient to support his conviction. We affirm.[2]

[1] TEX. TRANSP. CODE ANN. § 550.021.

[2] Originally appealed to the Fourth Court of Appeals, this appeal was transferred to this Court by the Texas Supreme Court pursuant to its docket equalization efforts. TEX. GOV'T CODE ANN. § 73.001. Should a conflict exist between precedent of the Fourth Court of Appeals and this Court on any relevant issue, this appeal will be decided in accordance with the precedent of the transferor court. TEX. R. APP. P. 41.3.

BACKGROUND

One evening, Shane Fewell stopped his vehicle and turned on his hazard lights on a two-lane road in Bexar County. Appellant, while attempting to pass around Fewell's vehicle, hit him hard enough to cause blunt force trauma and sever his aorta. No medical intervention would have saved Fewell's life. Appellant left the scene and drove to his home a few minutes away; he did not call the police or tell anyone what happened that evening.

A couple arriving on the scene later called 911 upon discovering Fewell's body. Detectives were able to track down Appellant by matching a side mirror found at the scene to his vehicle. When questioned, Appellant initially claimed he hit a tree, and when pressed, admitted he hit a person. He was charged with failing to stop and render aid, and a jury found him guilty.

STANDARD OF REVIEW

The only standard a reviewing court should apply in determining whether the evidence is sufficient to support each element of a criminal offense the State is required to prove beyond a reasonable doubt is the standard set forth in *Jackson v. Virginia*, 443 U.S. 307, 319, 99 S. Ct. 2781, 61 L. Ed. 2d 560 (1979). *See Adames v. State*, 353 S.W.3d 854, 859 (Tex. Crim. App. 2011); s*ee also Alfaro-Jimenez v. State*, 577 S.W.3d 240, 243–44 (Tex. Crim. App. 2019). We consider all the evidence in the light most favorable to the verdict and determine whether, based on that evidence and reasonable inferences to be drawn therefrom, a rational trier of fact could have found the essential elements of the

crime beyond a reasonable doubt. *Dobbs v. State*, 434 S.W.3d 166, 170 (Tex. Crim. App. 2014) (citing *Jackson*, 443 U.S. at 318–19).

ANALYSIS

Appellant's sole issue questions the sufficiency of the evidence to uphold his conviction. In order to find him guilty of the offense, the jury had to have sufficient evidence to find either: (1) he did not stop at the scene of the accident or (2) he failed to comply with the duties required by statute. TEX. TRANSP. CODE § 550.021(c). In this case, the jury heard the following testimony from several different sources: no 911 calls were made from Appellant's phone; Appellant was not at the scene of the accident when police arrived; and he initially lied about the source of the damage to his vehicle. Appellant testified he stopped, saw Fewell was dead, attempted to call 911 several times, and then went home for the evening. He admitted to failing to call 911 or police for the following two days but stated it was because he was "scatterbrained," despite his wherewithal to shop for a replacement side mirror the next day after the accident.

The primary issue here is one of credibility, which is in the sole province of the jury to determine. *See Curry v. State*, 622 S.W.3d 302, 310–11 (Tex. Crim. App. 2019). While cell phone records demonstrated Appellant did not have network connectivity during a two-hour period the night of the accident, there was no other evidence to corroborate Appellant's version of events, save for his own testimony. Thus, looking at the evidence in the light most favorable to the verdict, we conclude the jury did not believe Appellant's testimony. *Id*.

Appellant also argues he was not required to stop and render aid because Fewell could not be saved. By statute, a person involved in a vehicular collision must stop and remain at the scene until he completes the following duties:

> (1) give the operator's name and address, the registration number of the vehicle the operator was driving, and the name of the operator's motor vehicle liability insurer to any person injured or the operator or occupant of or person attending a vehicle involved in the collision;
>
> (2) if requested and available, show the operator's driver's license to a person described by Subdivision (1); and
>
> (3) provide any person injured in the collision reasonable assistance, including transporting or making arrangements for transporting the person to a physician or hospital for medical treatment if it is apparent that treatment is necessary, or if the injured person requests the transportation.

§ 550.023; *see also* § 550.021(a)(4).

Appellant argues that because Fewell was already deceased or near death, it was impossible for him to fulfill any of the section 550.023 duties because Fewell could not: (1) receive Appellant's driver's information; (2) request Appellant's driver's license; or (3) receive any meaningful medical treatment. We agree Appellant was not required to fulfill subsections (1) and (2); we do not agree he could not fulfill subsection (3).

The law in Texas for over eighty years has been one must stop and stay at the scene to render aid in a motor vehicle accident, regardless of the condition of the injured person. *Moore v. State*, 145 S.W.2d 887, 888 (Tex. Crim. App. 1940) ("[T]he mere fact that the injured person was found to be dead some few minutes after the accident, would not be a sufficient excuse to absolve appellant from blame on account of a failure to stop an appreciable length of time."); *May v. State*, 171 S.W.2d 488, 490 (Tex. Crim. App.

1943) ("[T]hat the boy was beyond all earthly aid . . . could have neither added to nor taken from the established fact of appellant's failure to stop.").

Here, even if the jury had believed Appellant's testimony he stopped after striking Fewell, Appellant still committed the offense by failing to stay at the scene and provide "reasonable assistance" to Fewell. *Williams v. State*, 531 S.W.3d 902, 914 (Tex. App.—Houston [14th Dist.] 2017), *aff'd*, 585 S.W.3d 478 (Tex. Crim. App. 2019) ("Sections 550.021 and 550.023 do not require that the life of the injured person could have been saved."). Although not defined by statute, "reasonable assistance" is given context by the enumeration of "transporting or making arrangements for transporting the person." *See Guerra v. State*, No. 04-07-00012-CR, 2008 Tex. App. LEXIS 1583, at *6–8 (Tex. App.—San Antonio Mar. 5, 2008, no pet.) (mem. op.) (not designated for publication) (analyzing "reasonable assistance" under section 550.023 for constitutional vagueness). In a motor vehicle fatality, "reasonable assistance" includes securing the accident site and to make arrangements for the transportation of the body; this is accomplished by calling 911, which, as described above, Appellant wholly failed to do. The fact a medical examiner testified *post factum* Fewell could not be saved did not absolve Appellant of his duty at the time of the accident to provide reasonable assistance. We overrule Appellant's sole issue.

CONCLUSION

The trial court's judgment is affirmed.

Alex Yarbrough
Justice

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