



**In The
Court of Appeals
Sixth Appellate District of Texas at Texarkana**

No. 06-09-00018-CR

SCOTT LEROY BROWN, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the County Court at Law #3
Smith County, Texas
Trial Court No. 003-81104-08

Before Morriss, C.J., Carter and Moseley, JJ.
Memorandum Opinion by Justice Moseley

MEMORANDUM OPINION

Following a confrontation with his soon-to-be ex-father-in-law, Scott Leroy Brown was convicted of criminal trespass.¹ *See* TEX. PENAL CODE ANN. § 30.05 (Vernon Supp. 2008). He appeals that conviction, challenging the legal and factual sufficiency of the evidence to support the conviction. We will recount and review the relevant evidence and conclude that the evidence is legally and factually sufficient. We affirm the trial court's judgment.

I. APPLICABLE LAW

A. Elements of Criminal Trespass

A person commits an offense if he enters or remains on or in property, including an aircraft or other vehicle, of another without effective consent or he enters or remains in a building of another without effective consent and he: (1) had notice that the entry was forbidden; or (2) received notice to depart, but failed to do so. TEX. PENAL CODE ANN. § 30.05(a); *Salazar v. State*, PD-0956-08, 2009 Tex. Crim. App. LEXIS 731 (Tex. Crim. App. June 3, 2009). Here, focusing on Section 30.05(a)(2), Brown lodges several attacks directed generally at whether he "failed to do so."

¹This case is a companion case to *Brown v. State*, cause number 06-09-00017-CR in which Chief Justice Morriss reviewed the legal and factual sufficiency of the evidence to support Brown's conviction for burglary of a vehicle. We affirmed that conviction. A more detailed account of the facts is presented in that lead opinion. Originally appealed to the Twelfth Court of Appeals, this case was transferred to this Court by the Texas Supreme Court pursuant to its docket equalization efforts. *See* TEX. GOV'T CODE ANN. § 73.001 (Vernon 2005). We are unaware of any conflict between precedent of the Twelfth Court of Appeals and that of this Court on any relevant issue. *See* TEX. R. APP. P. 41.3.

B. Standards of Review

When reviewing the legal sufficiency of the evidence, an appellate court must ask "whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *Jackson v. Virginia*, 443 U.S. 307, 319 (1979). This standard mandates that the reviewing court accord deference to the fact-finder's duty to resolve conflicts in testimony and other evidence. *Clayton v. State*, 235 S.W.3d 772, 778 (Tex. Crim. App. 2007). This review standard requires an examination of all the evidence, both properly and improperly admitted, to determine whether the cumulative force of all the evidence (direct, circumstantial, or both) supports the verdict when such evidence is viewed in the light most favorable to that verdict. *Id.*; see also *Williams v. State*, 235 S.W.3d 742, 750 (Tex. Crim. App. 2007).

Factual sufficiency review has subtle differences. "Evidence may be factually insufficient if: '1) it is so weak as to be clearly wrong and manifestly unjust or 2) the adverse finding is against the great weight and preponderance of the available evidence.'" *Berry v. State*, 233 S.W.3d 847, 854 (Tex. Crim. App. 2007) (quoting *Johnson v. State*, 23 S.W.3d 1, 11 (Tex. Crim. App. 2000)). "Such a factual sufficiency review requires the reviewing court to consider all of the evidence." *Id.* (quoting *Marshall v. State*, 210 S.W.3d 618, 625 (Tex. Crim. App. 2006)). "A clearly wrong and unjust verdict occurs where the jury's finding is manifestly unjust, shocks the conscience, or clearly

demonstrates bias." *Id.* (quoting *Sells v. State*, 121 S.W.3d 748, 754 (Tex. Crim. App. 2003); *Santellan v. State*, 939 S.W.2d 155, 164 (Tex. Crim. App. 1997)).

II. SUMMARY OF RELEVANT FACTS

According to Robert Walker,² after the two met on the roadway, Brown tailgated him to the Walker residence, parked on an easement, blocking Walker's truck in, and began "hollering and cussing and raising cane [sic]" as he walked up toward the house. In response to Brown's cursing, Walker "did holler back at him," instructing Brown to get off his property. He testified that he told Brown three times to leave the property, two times before he called the sheriff's department, and once after he had called the sheriff's department.

Walker testified that the initial confrontation, that portion of the exchange occurring before Walker went inside to call 9-1-1, lasted two or three minutes. After Walker directed Brown to leave the property and when Walker expressed his intention of calling the sheriff's department, Brown walked further up the driveway, pounded the truck's tailgate with his hand, opened the driver's side door of Walker's truck, and took out the .38 revolver that Walker kept in the door's storage compartment. As Walker was going inside to call the sheriff's department, Brown waved the gun in the air all the way back to his own vehicle.

Wanda Walker had come to the door by now, having heard the commotion outside. She described Walker as upset and "hollering back and forth with [Brown]." She asked her husband

²As Robert Walker played a more central role in this matter than his wife, Wanda Walker, this opinion will refer to him as Walker. We will refer to Wanda Walker as Wanda.

what was going on, to which he replied that Brown had Walker's gun. While Walker was inside making the telephone calls, Wanda, who had stepped back inside to watch from a long window near the door, yelled at Brown to leave the property. Brown then directed his insults at her and remained on the property.

Walker finished his call to the sheriff's department, called the gated community's security department, and then, after learning from his wife that Brown had returned the gun to the truck,³ came back out the front door. Brown was still standing by his own vehicle and still cursing and yelling "vile" obscenities about Walker's daughter. At this point, both Walkers were outside the house, yelling at Brown to leave their property. Walker informed Brown that he had called the authorities and that they were on their way to the Walkers' home. Walker then directed Brown for the third time to leave the property. Brown "cussed a little more and raised a little more cain and said a few more words I'm not going to repeat and got in his vehicle and drove off."

Wanda estimated that five to seven minutes passed from the time she first saw Brown with the gun to the time that he returned the gun. On cross-examination, Walker explained that he stayed outside only a short time in an attempt to convince Brown to leave the property and return the gun before he went in to call 9-1-1. When repeatedly asked about the exact duration of each stage of this

³As Walker called community security and the sheriff's department, Wanda remained at the long window and watched Brown stand by his vehicle with the gun up for a while and then walk toward Walker's truck. When Walker came back from making telephone calls, she told him that she thought Brown had returned the gun to the truck, although she did not clearly see him do so because her vision was obstructed by the angle of the house.

confrontation, Walker admitted some uncertainty: "I'm going to tell you I was so scared and nervous I don't remember times precise."

Brown testified in his own defense that he got out of his vehicle and that he and Walker exchanged words for approximately five minutes about the roadway incident. He admitted that he was asked to leave. In fact, he admitted that he was asked *twice* to leave before he did so. He admitted that even after he was instructed to leave, he went up toward the house to get into Walker's truck and get the gun (although he explained that he put it right back).

III. DISCUSSION

Legal and Factual Sufficiency of the Evidence

Brown attacks the sufficiency of the evidence from a number of directions. He points to evidence that would undermine the evidence that after receiving notice to depart, he "failed to do so."

1. Left after a short period of time

Brown maintains that "it took a few minutes before he actually left the property." "He may not have left the property the first instance he was asked to leave but ultimately he did leave after a very short period of time." Brown fails to acknowledge that during that "very short period of time," he entered Walker's truck, took out Walker's gun, threatened Walker, screamed at the Walkers, and cursed the Walkers and their family. Brown was very active in this "very short period of time."

We point out that this is not a matter of Brown being directed to leave the property and it taking Brown some amount of time to physically leave the property. That is, we are not considering

the time it took for Brown to initiate and complete his departure from the Walker property. We can foresee instances where that might take some amount of time, depending on the distance one must go to effect his departure or the means by which one must effect his departure. Such is not the case here.

Brown's contention is somewhat similar as that urged by the appellant in *Cole v. State*, Nos. 14-03-00083-CR, 14-03-00084-CR, 2004 Tex. App. LEXIS 2250 (Tex. App.—Houston [14th Dist.] Mar. 11, 2004, pets. ref'd [2 pets.]) (mem. op., not designated for publication). Cole contended that the evidence was legally and factually insufficient to prove she failed to leave a stadium after she was instructed to do so. *Id.* at *5. She claimed that because she was walking down a ramp, which was a route that could have been used to leave the stadium, the State failed to prove that she failed to depart when asked to do so. *Id.* The Houston Fourteenth Court pointed out, however, that Cole's supervisor had asked Cole to leave approximately ten times before the supervisor went to get the police officer working as stadium security and that Cole failed to leave. *Id.*

That Brown ultimately made the decision to leave, seemingly upon learning that the sheriff's department was on its way, does not diminish the evidence that he failed to depart in a reasonable time following his repeated warnings to do so. The law does not allow a person to remain, after notice has been given, to finish saying or doing what the actor chooses to say or do, and leisurely depart on his or her own terms or when the urge to do so strikes. We recognize that the time from issuance of notice to a full and complete departure cannot be instantaneous; the laws of physics

require that it will necessarily take some amount of time for the person to comply with the instruction to leave. Here, however, it is not a close call. Brown lingered long enough to continue his ranting and threatening behavior and to get into Walker's truck, get the gun, and return the gun upon reconsideration of that idea. Under the circumstances, the delay between the repeated notices to depart and Brown's decision to finally do so is unreasonable.

2. No verbal refusal to depart

Brown also points out that he never verbally refused to leave the property. Based on the evidence that Brown physically remained on the property after having been instructed to leave and chose to remain while screaming, cursing, burglarizing a vehicle, and waving a gun, the jury was permitted to infer that Brown refused to leave the property. No words to that effect were necessary; it is clear from Brown's conduct that he chose to not leave the property. We add that Section 30.05 of the Texas Penal Code does not require that the actor verbally express a refusal to leave the property after being instructed to do so. The absence of a verbal refusal to leave the property does not render the evidence legally or factually insufficient.

3. Left on his own volition

Brown challenges the evidence that would show that he failed to depart after receiving notice to do so because the evidence shows that he did, in fact, leave the property and did so under his own volition. In other words, since he did not have to be forcibly removed from the Walkers' property, he contends that there is no evidence that he failed to depart the property after having been directed

to do so. Section 30.05 also does not require that the actor be forcibly removed in order to constitute an offense. Brown's delayed decision to leave came only after repeated instructions to do so, a great deal of confrontation, the commission of another criminal offense, and an unreasonable amount of time. The fact that he did leave under his own power is of no consequence. Evidence that Brown left before law enforcement authorities arrived does not mean that the State failed to present legally or factually sufficient evidence that Brown failed to leave after receiving notice to do so.

IV. CONCLUSION

The record is clear that Brown was told to leave and failed to do so. In fact, he admits that he was *twice* told to leave and did not do so. Along with Walker's testimony that he told Brown to leave at least three times and Wanda's testimony that she, too, directed Brown to leave the premises, Brown's own admissions that he remained on the property after being instructed to depart constitute legally sufficient evidence that he failed to depart. The record shows that notice was given and received and, as shown by Brown's remaining on the property, ignored or disregarded.

The jury had before it legally sufficient evidence to permit the jury to infer from Brown's words and actions that Brown failed to depart after having been directed several times to do so. The cumulative force of the evidence supports the jury's verdict when viewed in a light most favorable to that verdict. We conclude that legally sufficient evidence supports the jury's findings as to the failure element of criminal trespass.

After reviewing the evidence, we cannot say that the evidence that Brown failed to depart within the meaning of Section 30.05(a) is so weak as to be clearly wrong and manifestly unjust. Nor can we conclude that the jury's finding on this element is against the great weight and preponderance of the available evidence. We conclude that factually sufficient evidence supports the jury's determination and overrule Brown's point of error to the contrary.

Having concluded that legally and factually sufficient evidence supports the jury's verdict, we overrule Brown's points of error and affirm the judgment of the trial court.

Bailey C. Moseley
Justice

Date Submitted: June 25, 2009
Date Decided: July 31, 2009

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