NO. 12-11-00231-CR

IN THE COURT OF APPEALS

TWELFTH COURT OF APPEALS DISTRICT

TYLER, TEXAS

RONALD HENDERSON, APPELLANT	***§***	***APPEAL FROM THE***
V.	***§***	***COUNTY COURT AT LAW***
THE STATE OF TEXAS, APPELLEE	***§***	***HOUSTON COUNTY, TEXAS***

MEMORANDUM OPINION

Ronald Henderson appeals his conviction for evading arrest or detention. In his sole issue on appeal, he challenges the sufficiency of the evidence to support his conviction. We affirm.

BACKGROUND

Shortly after midnight on March 18, 2011, Officer Vickers of the Crockett Police Department was on patrol with Officer Little, a recently hired field trainee police officer. During their patrol, the officers noticed a vehicle moving very slowly while blocking the roadway near what they described as a high-crime apartment complex. The officers circled the block and saw that the vehicle had stopped in front of a driveway at the complex while also impeding oncoming traffic on the main road. Upon approaching the vehicle, they observed a pedestrian later identified as Appellant leaning on the driver's side of the vehicle while talking to the vehicle's two occupants.

The officers, dressed in uniform, activated their emergency lights on their marked patrol unit in order to investigate suspected traffic offenses.[1] As Officer Vickers exited the patrol unit,

[1] The patrol vehicle's siren was not activated during the course of the stop.

Appellant began to walk away from the scene to retreat to an apartment.[2] Officer Vickers told Appellant to stop, but Appellant failed to halt his escape. Rather, Appellant sped up to a fast walk, then a "trot," then to a "jog." Officer Vickers called to Appellant to halt several times, and the officer ultimately sped up to "almost a full-out run" to shorten the distance between him and Appellant. Appellant turned his head to look at the officer three times as he made his way to the apartment. Officer Vickers was able to close the distance between himself and Appellant to approximately four feet, but not before Appellant entered the apartment.

Officer Vickers knocked loudly on the apartment door, announcing himself as a police officer. Approximately forty-five seconds to a minute later, a third party answered the door. While the door was open, the officer observed Appellant in the apartment and asked him to come outside. Appellant complied. During their investigation, the officers had discovered a cigar in a van in plain view that appeared to them to be marijuana. Appellant had the keys to the van and claimed that he owned it. Appellant was arrested for evading arrest and possession of marijuana. The driver of the vehicle was also arrested for providing a false name to the officers. The passenger was released.

At trial, the jury found Appellant guilty on the evading arrest charge, but acquitted him on the possession of marijuana charge. After a trial on punishment, the jury assessed punishment at 365 days of confinement. This appeal followed.

SUFFICIENCY OF THE EVIDENCE

In his sole issue, Appellant challenges the legal and factual sufficiency of the evidence.

Standard of Review

The Texas Court of Criminal Appeals recently held that the ***Jackson v. Virginia*** legal sufficiency standard is the only standard a reviewing court should apply in determining whether the evidence is sufficient to support each element of a criminal offense that the state is required to prove beyond a reasonable doubt. *See* ***Brooks v. State***, 323 S.W.3d 893, 894 (Tex. Crim. App. 2010) (plurality op.). Appellant argues that the ***Brooks*** analysis is incorrect, and urges this court to continue analyzing factual sufficiency under the ***Clewis*** standard. *See generally* ***Green v. State***, __ S.W.3d __, No. 14-09-00338-CR, 2011 WL 3687567 (Tex. App.–Houston [14th Dist.]

[2] Although Officer Vickers was not entirely certain, he surmised that the distance between the patrol vehicle and the apartment door was approximately 75 to 100 feet.

Aug. 12, 2011, no pet.) (plurality op.) (Frost and Seymore, J.J., concurring). This court has followed ***Brooks***. *See, e.g.*, ***Manuel v. State***, __ S.W.3d __, No. 12-09-00454-CR, 2011 WL 3837561, at *14 (Tex. App.–Tyler Aug. 31, 2011, no pet.). Accordingly, we will not independently consider Appellant's challenge to the factual sufficiency of the evidence.

Under the single sufficiency standard, we view the evidence in the light most favorable to the verdict and determine whether 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, 99 S. Ct, 2781, 2789, 61 L. Ed. 2d 560 (1979); ***Hooper v. State***, 214 S.W.3d 9, 13 (Tex. Crim. App. 2007). Under this standard, a reviewing court does not sit as a thirteenth juror and may not substitute its judgment for that of the fact finder by reevaluating the weight and credibility of the evidence. *See* ***Brooks***, 323 S.W.3d at 899; ***Dewberry v. State***, 4 S.W.3d 735, 740 (Tex. Crim. App. 1999). Rather, we defer to the trier of fact's responsibility to resolve conflicts in testimony, weigh evidence, and draw reasonable inferences from basic facts to ultimate facts. ***Jackson***, 443 U.S. at 319, 99 S. Ct. at 2789; ***Hooper***, 214 S.W.3d at 13. Every fact does not need to point directly and independently to the guilt of the appellant, as long as the cumulative force of all the incriminating circumstances is sufficient to support the conviction. ***Hooper***, 214 S.W.3d at 13.

Applicable Law

The essential elements of evading arrest or detention are (1) a person, (2) intentionally flees, (3) from a peace officer, (4) with knowledge that he is a peace officer, (5) who is attempting to arrest or detain the defendant, and (6) the attempted arrest or detention is lawful. TEX. PENAL CODE ANN. § 38.04(a) (West 2011); *see* ***Rodriguez v. State***, 578 S.W.2d 419, 419 (Tex. Crim. App. 1979). Appellant contends that Officer Vickers did not attempt to detain him, or alternatively that he did not intentionally flee from the officer, because the evidence shows that he did not have specific knowledge that Officer Vickers attempted to detain him. Also, Appellant argues that the evidence is insufficient to show that the detention was lawful, and, more particularly, that the officer lacked specific, articulable facts leading to a reasonable suspicion that Appellant committed an offense.

1. Attempted Detention

There are three distinct types of interactions between a police officer and a citizen: (1) encounters, (2) investigative detentions, and (3) arrests. ***State v. Perez***, 85 S.W.3d 817, 819 (Tex. Crim. App. 2002). In an encounter, an officer may ask the citizen if he is willing to answer

questions or pose questions to him if he is willing to listen. ***Id.*** During an encounter, the citizen can terminate the interaction with the officer and walk away at any time. ***Munera v. State***, 965 S.W.2d 523, 527 (Tex. App.–Houston [14th Dist.] 1997, pet. ref'd). Consensual encounters do not trigger Fourth Amendment protection if a reasonable person would feel free to disregard the officer and end the encounter at his own will and at any time. ***Florida v. Bostick***, 501 U.S. 429, 434, 111 S. Ct. 2382, 2386, 115 L. Ed. 2d 389 (1991). Regardless of whether there has been any wrongdoing, in an encounter, officers may ask the individual general questions or ask to see and examine the individual's identification, so long as the officer does not indicate that compliance is required. ***Id.***, 501 U.S. at 429, 111 S. Ct. at 2386.

By comparison, during an investigative detention, an officer is authorized to temporarily detain an individual for investigative purposes when the officer has reasonable suspicion that the individual could be involved in some type of criminal activity. *See* ***Balentine v. State***, 71 S.W.3d 763, 768 (Tex. Crim. App. 2002). Investigative detentions are justified when, after considering the totality of the circumstances, the detaining officer has specific articulable facts which, when taken together with rational inferences from those facts, lead to a reasonable suspicion that the person detained actually is, has been, or soon will be engaged in criminal activity. ***Id.*** The controlling question is whether the actions of the officer would have made a reasonable person feel that he was not free to decline the officer's request or otherwise terminate the encounter. ***State v. Velasquez***, 994 S.W.2d 676, 679 (Tex. Crim. App. 1999). Consensual encounters can become investigative detentions if the officer conveys an indication that compliance is mandatory. ***Id.*** The existence of reasonable suspicion turns on an objective assessment of the detaining officer's actions in light of the facts and circumstances confronting him at the time, and not on the officer's state of mind. *See* ***United States v. Knights***, 534 U.S. 112, 122, 122 S. Ct. 587, 593, 151 L. Ed. 2d 497 (2001); ***Griffin v. State***, 215 S.W.3d 403, 409 (Tex. Crim. App. 2006). Absent reasonable suspicion, an investigative detention violates the Fourth Amendment. *See* ***Francis v. State***, 922 S.W.2d 176, 178 (Tex. Crim. App. 1996).

The final level of interaction, an arrest, is also a seizure. ***Id.*** An arrest must be accompanied by probable cause to believe that a person has engaged in or is engaging in criminal activity. ***Id.*** This level of suspicion is meant to protect law abiding citizens from the high level of intrusion that accompanies an arrest. ***Id.*** Unlike an investigative detention, where the seizure may end within a brief period of time, the seizure involved in an arrest will not be brief. ***Id.***

2. Lawfulness of Detention

A police officer may stop and detain an individual for the violation of a traffic law. *See* ***Walter v. State***, 28 S.W.3d 538, 542 (Tex. Crim. App. 2000); ***Garcia v. State***, 827 S.W.2d 937, 944 (Tex. Crim. App. 1992). "Additionally, proof that an offense was actually committed is not necessary to justify the investigative detention as long as [the officer] reasonably believed that a violation was in progress." ***Hicks v. State***, 255 S.W.3d 351, 354-55 (Tex. App.–Texarkana 2008, no pet.) (holding officer had reasonable suspicion to detain a vehicle that was stopped, standing, or parked in an intersection of a roadway impeding traffic) (citing ***Drago v. State***, 553 S.W.2d 375 (Tex. Crim. App. 1977)).

A person commits the offense of obstructing a highway or other passageway if

> without legal privilege or authority, he intentionally, knowingly, or recklessly[ ] obstructs a . . . street . . . or any other place used for the passage of persons, vehicles, or conveyances, regardless of the means of creating the obstruction and whether the obstruction arises from his acts alone or from his acts and the acts of others. . . .

TEX. PENAL CODE ANN. § 42.03(a)(1) (West 2011). "Obstruct" means to "render impassable or to render passage unreasonably inconvenient or hazardous." ***Id.*** § 42.03(b). In addition, "[a]n operator may not, except momentarily to pick up or discharge a passenger, stand or park an occupied or unoccupied vehicle[ ] in front of a public or private driveway. . . ." TEX. TRANSP. CODE ANN. § 545.302(b)(1) (West 2011). "Stand" means "to halt an occupied or unoccupied vehicle, other than temporarily while receiving or discharging passengers." ***Id.*** § 541.401(9). "Park" means "to stand an occupied or unoccupied vehicle, other than temporarily while loading or unloading merchandise or passengers." ***Id.*** § 541.401(6).

"A pedestrian may not walk along and on a roadway if an adjacent sidewalk is provided and is accessible to the pedestrian." ***Id.*** § 552.006(a) (West 2011). "A person may not stand in a roadway to solicit a ride, contribution, employment, or business from an occupant of a vehicle, except that a person may stand in a roadway to solicit a charitable contribution if authorized to do so by the local authority having jurisdiction over the roadway." ***Id.*** § 552.007(a) (West 2011).

Discussion

First, Appellant contends that the facts show Officer Vickers made only a "casual attempt to gain [Appellant's] attention." To support his contention that the officer did not sufficiently attempt to detain him, or that he did not intentionally flee the officer despite the officer's

commands to stop, Appellant argues (1) that the officer testified Appellant told him "that he was unaware of any effort to arrest or detain him," (2) that Officer Little, the officer accompanying Officer Vickers, heard him "call" Appellant only once, and (3) that Appellant allegedly "walked" and "proceeded" to the apartment.

But the jury determined the credibility of the witnesses and resolved the evidentiary inconsistencies in the State's favor, which was its prerogative as fact finder. ***Losada v. State***, 721 S.W.2d 305, 309 (Tex. Crim. App. 1986). Additionally, the evidence shows that Appellant immediately began his retreat to the apartment, and then he accelerated after the officer called for him to stop several times. Appellant also turned his head to look at the officer on three occasions as he made his retreat. Just as the officer closed the distance to approximately four feet while still commanding Appellant to stop, Appellant entered the apartment and shut the door. After knocking on the door and announcing that he was a police officer, a third party opened the door, and Officer Vickers saw Appellant, who acted as though he was oblivious to the events that transpired moments earlier. The officer told Appellant to step outside to talk about the situation. It was not until then that Appellant submitted to the officer's show of authority.

Given Appellant's and Officer Vickers's close proximity before Appellant began to retreat to the apartment, and the turns of Appellant's head to look at the officer after he called to Appellant to stop, rational jurors could have concluded that Appellant heard Officer Vickers's commands to stop, yet failed to do so. Under these circumstances, a rational jury also could have concluded that Appellant knew or should have known that Officer Vickers was attempting to question him and that a reasonable person would have believed he was not free to leave. In sum, a rational jury could have concluded that Officer Vickers made a show of authority and that Appellant refused to yield to it. ***Griego v. State***, 331 S. W.3d 815, 828 (Tex. App.–Amarillo) (op. on reh'g), *vacated on other grounds*, 337 S.W.3d 902 (Tex. Crim. App. 2011) (per curiam).

With regard to Appellant's haste in making his way to the apartment, the evidence shows, when viewed in the light most favorable to the verdict, that Appellant did more than "walk" or "proceed" to the apartment. Officer Vickers testified that once he activated his lights and attempted to exit the police cruiser, Appellant went from a walk, to a "trot," and ultimately to a jog. Even if it were true that Appellant merely walked away from the officer, a dispirited, brief attempt to walk away from an officer's command to stop has been held to be sufficient flight to constitute evading arrest or detention. ***Griego***, 331 S.W.3d at 828 (citing ***Sartain v. State***, No.

03-09-00066-CR, 2010 WL 2010838, at *3 (Tex. App.–Austin May 19, 2010, no pet.) (mem. op., not designated for publication) (observing that conduct may still be evading "[h]owever ineffectual appellant's brief 'flight' may have been"); ***Diaz v. State***, No. 08-09-00002-CR, 2010 WL 3259345, at *2 (Tex. App.–El Paso Aug. 18, 2010, no pet.) (op., not designated for publication) (concluding that evidence was sufficient when "both officers testified that Appellant walked away after being questioned at the gate despite their commands to stop")).

Turning to the legality of the attempted detention, when the officers approached the vehicle, it was obstructing the roadway by impeding the flow of oncoming traffic. *See* TEX. PENAL CODE ANN. § 42.03(a)(1). Although the record is clear that at least one lane of traffic was completely blocked by the vehicle, the record is not entirely clear as to whether the vehicle rendered passage of the street "unreasonably inconvenient or hazardous." *See* ***id.*** § 42.03(b). However, even if it could be argued that blocking a lane of traffic was not an "obstruction," Officer Vickers testified unequivocally that the vehicle was stopped, standing, or parked in front of a driveway, which is also an offense. *See* TEX. TRANSP. CODE ANN. § 545.302(b)(1). The officers did not initially see Appellant until they approached the vehicle because it was dark and the vehicle's lights shined in their eyes. Nevertheless, the detention of Appellant, who was not an occupant of the car, was also warranted, because it appeared to the officer that Appellant was standing in the roadway to solicit a ride or transact business.[3] *See* ***id.*** § 552.007(a). Finally, as we noted above, it is immaterial whether the offense actually occurred. Rather, the issue is whether the officer had reasonable suspicion that the offenses occurred so that he could briefly detain Appellant and the occupants of the car, and either confirm or dispel his suspicion. *See* ***Hicks***, 255 S.W.3d at 354-55. Under these circumstances, we hold that the officer had reasonable suspicion to detain Appellant. Appellant began to flee at the moment that Officer Vickers announced his presence and commanded Appellant to halt.

Appellant's sole issue is overruled.

DISPOSITION

We ***affirm*** the judgment of the trial court.

[3] Officer Vickers did not specifically testify that Appellant appeared to be soliciting a ride, contribution, employment, or business from an occupant of the vehicle, but he stated that it appeared that Appellant had "flagged" the vehicle down, causing the vehicle to impede the flow of traffic. The officer testified that he initiated the detention to determine whether such offenses occurred.

SAM GRIFFITH
Justice

Opinion delivered November 9, 2011.
Panel consisted of Worthen, C.J., Griffith, J., and Hoyle, J.

(DO NOT PUBLISH)