NO. 12-16-00071-CR

IN THE COURT OF APPEALS

TWELFTH COURT OF APPEALS DISTRICT

TYLER, TEXAS

CHRISTOPHER BLAINE JONES, APPELLANT	***§***	***APPEAL FROM THE 217TH***
V.	***§***	***JUDICIAL DISTRICT COURT***
THE STATE OF TEXAS, APPELLEE	***§***	***ANGELINA COUNTY, TEXAS***

MEMORANDUM OPINION

Christopher Blaine Jones appeals his conviction for assault on a public servant. In two issues, Appellant challenges the denial of his motion to suppress and the sufficiency of the evidence. We affirm.

BACKGROUND

Lufkin Police Sergeant David Walker was supervising an event at the Pitser Garrison Convention Center, also known as the Lufkin Civic Center. One of his duties was to enforce the Texas Alcoholic Beverage Code. When the event was over, Walker saw a group of people exit the center carrying beer cans. He shouted at them to dispose of the beverages, but they did not comply. Walker followed the group into the parking lot, where he was confronted and assaulted by Appellant.

Appellant was charged by indictment with assault on a public servant and pleaded "not guilty." The jury found Appellant "guilty" and assessed his punishment at imprisonment for ten years, suspended for a term of ten years, and a $10,000 fine. This appeal followed.

MOTION TO SUPPRESS

In Appellant's first issue, he argues that the evidence of the assault should have been suppressed because it was the result of an unlawful detention by Sergeant Walker.

Standard of Review

We review a trial court's ruling on a motion to suppress under a bifurcated standard of review. ***Hubert v. State***, 312 S.W.3d 554, 559 (Tex. Crim. App. 2010); ***Carmouche v. State***, 10 S.W.3d 323, 327 (Tex. Crim. App. 2000). A trial court's decision to grant or deny a motion to suppress is generally reviewed under an abuse of discretion standard. ***Shepherd v. State***, 273 S.W.3d 681, 684 (Tex. Crim. App. 2008). We give almost total deference to a trial court's determination of historical facts, especially if those determinations turn on witness credibility or demeanor, and review de novo the trial court's application of the law to facts not based on an evaluation of credibility and demeanor. ***Neal v. State***, 256 S.W.3d 264, 281 (Tex. Crim. App. 2008). When deciding a motion to suppress evidence, a trial court is the exclusive trier of fact and judge of the witnesses' credibility. ***Maxwell v. State***, 73 S.W.3d 278, 281 (Tex. Crim. App. 2002). Accordingly, a trial court may choose to believe or disbelieve all or any part of a witness's testimony. *See* ***State v. Ross***, 32 S.W.3d 853, 855 (Tex. Crim. App. 2000).

Analysis

After Appellant confronted Sergeant Walker in the parking lot, Walker told him to put his hands on a nearby vehicle. Appellant argues that at that point, he was unlawfully detained in violation of the Fourth and Fourteenth Amendments to the United States Constitution and Article I, Section 9 of the Texas Constitution. Consequently, he argues that the evidence of his detention and subsequent arrest should have been suppressed under Article 38.23 of the code of criminal procedure.

Under Article 38.23, "[n]o evidence obtained by an officer or other person in violation of any provisions of the Constitution or laws of the State of Texas, or of the Constitution or laws of the United States of America, shall be admitted in evidence against the accused on the trial of any criminal case." TEX. CODE CRIM. PROC. ANN. art. 38.23(a) (West 2005). Even assuming Appellant was unlawfully detained, we cannot agree that the evidence of the assault on Sergeant Walker should have been suppressed. "Obtained in violation of the law" under Article 38.23 contemplates that a crime has been committed, evidence of the crime exists, and officers violate the law in attempting to obtain evidence of the crime. ***State v. Mayorga***, 901 S.W.2d 943, 945-

46 (Tex. Crim. App. 1995). Article 38.23 does not require the exclusion of evidence of a crime committed after an unlawful arrest or detention. *See* ***id.***; ***Donoho v. State***, 39 S.W.3d 324, 327 (Tex. App.—Fort Worth 2001, pet. ref'd). Here, because the assault occurred after the alleged unlawful detention, the evidence of it was not "obtained in violation of the law" and thus not subject to exclusion under Article 38.23. *See* ***Mayorga***, 901 S.W.2d at 945-46; *see also* TEX. CODE CRIM. PROC. ANN. art. 38.23(a). Accordingly, we overrule Appellant's first issue.

EVIDENTIARY SUFFICIENCY

In Appellant's second issue, he argues that we should reverse his conviction because Sergeant Walker was not acting as a public servant at the time of the assault. We construe his argument as an evidentiary sufficiency challenge.

Standard of Review and Applicable Law

In reviewing the sufficiency of the evidence, the appellate court must determine whether, considering all the evidence in the light most favorable to the verdict, the trier of fact was rationally justified in finding guilt beyond a reasonable doubt. ***Jackson v. Virginia***, 443 U.S. 307, 319, 99 S. Ct. 2781, 2789, 61 L. Ed. 2d 560 (1979); ***Brooks v. State***, 323 S.W.3d 893, 899 (Tex. Crim. App. 2010). Considering the evidence "in the light most favorable to the verdict" under this standard requires the reviewing court to defer to the trier of fact's credibility and weight determinations, because the trier of fact is the sole judge of the witnesses' credibility and the weight to be given their testimony. ***Brooks***, 323 S.W.3d at 899; *see* ***Jackson***, 443 U.S. at 319, 99 S. Ct. at 2789. A "court faced with a record of historical facts that supports conflicting inferences must presume—even if it does not affirmatively appear in the record—that the trier of fact resolved any such conflicts in favor of the prosecution, and must defer to that resolution." ***Jackson***, 443 U.S. at 326, 99 S. Ct. at 2793. A reviewing court must evaluate all of the evidence in the record, including direct, circumstantial, admissible, and inadmissible evidence. ***Dewberry v. State***, 4 S.W.3d 735, 740 (Tex. Crim. App. 1999). Circumstantial evidence is as probative as direct evidence in establishing the guilt of an actor and can alone be sufficient to establish guilt. ***Hooper v. State***, 214 S.W.3d 9, 13 (Tex. Crim. App. 2007).

Assault on a public servant, as alleged in this case, requires proof of misdemeanor assault plus the following additional elements: (1) the person assaulted was a public servant, (2) the defendant knew that the person was a public servant, (3) the public servant was discharging

official duties at the time of the assault, and (4) the public servant was lawfully discharging official duties. *See* TEX. PENAL CODE ANN. § 22.01(b)(1) (West Supp. 2016); ***Hall v. State***, 158 S.W.3d 470, 473 (Tex. Crim. App. 2005). A "public servant" is defined, in pertinent part, as a person elected, selected, appointed, employed, or otherwise designated as an officer, employee, or agent of government. TEX. PENAL CODE ANN. § 1.07(a)(41)(A) (West Supp. 2016).

Analysis

Appellant argues that Sergeant Walker did not qualify as a public servant at the time of the assault because he was not working his regular police department shift. Although Walker was not working his regular shift, the evidence supports that he was a public servant lawfully discharging his official duties at the time of the assault.

At trial, Sergeant Walker testified that he was the Lufkin Police Sergeant over the traffic division. As such, in addition to his traffic related duties, he oversaw security for the convention center. Walker assigned police officers on a rotation basis to provide security at convention center events. As part of their duties, the officers were required to ensure that the city complied with the Texas Alcoholic Beverage Code.

Sergeant Walker further testified that on the night of the assault, he and two other officers were working security for the National Wild Turkey Federation banquet. He was wearing his uniform, badge, gun belt, and radio. Walker had stationed the officers near the exits to remind people not to take alcohol outside because it is a TABC violation. At one point, Walker saw a group of six to ten people about to exit the building holding beer cans. He yelled to them, "Hey, hey, y'all leave your alcohol here. You've got to leave your alcohol here." The group did not respond but continued through the doors. Walker followed them into the parking lot, and they began to run. Walker was concerned because of the TABC violation as well as the potential open container law violation.

Sergeant Walker testified that the group disappeared into the parked cars. He continued walking, and a woman from the group stepped in front of him and said, "We've got it here. You don't have to bother. We'll get rid of the alcohol." Walker sidestepped the woman and kept walking. He was next confronted by Clinton Smith, who told him that he had two choices: go back inside the convention center, or "[Walker] knew the other one."

Sergeant Walker, sensing that the group intended to harm him, took two steps back from Smith, radioed for assistance, and pulled his Taser. Smith walked away. A few seconds later,

Appellant approached Walker and said, "You heard him. You've got two options. You get back in that Civic Center, and you know the other one." Walker asked Appellant to place his hands on a car. Appellant said, "Yeah, I can do that for you." Walker saw others from the group beginning to approach him as Appellant turned around and placed his hands on the car. Walker placed a hand on Appellant's back so that he could sense Appellant's movements while watching the others. Then Appellant hit Walker.

In arguing that Sergeant Walker was not acting as a public servant at the time of the assault, Appellant asserts that Walker was "off duty" and employed by the National Wild Turkey Federation at the time. However, Walker testified that he received overtime benefits from the city for his work at the convention center. Lieutenant David Young, who provided security at the convention center that night as well, also testified that he was on duty and employed by the City of Lufkin at the time.

In the light most favorable to the jury's verdict, the evidence is sufficient to show that Sergeant Walker was a public servant lawfully discharging his official duties when Appellant assaulted him. *See* TEX. PENAL CODE ANN. § 1.07(a)(41)(A). Thus, we conclude that the jury was rationally justified in finding, beyond a reasonable doubt, that Appellant committed assault on a public servant. *See* ***id.*** §§ 1.07(a)(41)(A), 22.01(b)(1); ***Jackson***, 443 U.S. at 319, 99 S. Ct. at 2789; *see also* ***Brooks***, 323 S.W.3d at 899. Accordingly, we overrule Appellant's second issue.

DISPOSITION

Having overruled Appellant's first and second issues, we ***affirm*** the trial court's judgment.

GREG NEELEY
Justice

Opinion delivered June 21, 2017.
Panel consisted of Worthen, C.J., Hoyle, J., and Neeley, J.

(DO NOT PUBLISH)

COURT OF APPEALS

TWELFTH COURT OF APPEALS DISTRICT OF TEXAS

JUDGMENT

JUNE 21, 2017

NO. 12-16-00071-CR

CHRISTOPHER BLAINE JONES,
Appellant
V.
THE STATE OF TEXAS,
Appellee

Appeal from the 217th District Court
of Angelina County, Texas (Tr.Ct.No. 2015-0289)

THIS CAUSE came to be heard on the appellate record and briefs filed herein, and the same being considered, it is the opinion of this court that there was no error in the judgment.

It is therefore ORDERED, ADJUDGED and DECREED that the judgment of the court below **be in all things affirmed**, and that this decision be certified to the court below for observance.

Greg Neeley, Justice.
Panel consisted of Worthen, C.J., Hoyle, J., and Neeley, J.