NO. 12-16-00122-CR

IN THE COURT OF APPEALS

TWELFTH COURT OF APPEALS DISTRICT

TYLER, TEXAS

VAUGHNTRELL ANDWON CUMMINGS, APPELLANT	***§***	***APPEAL FROM THE 3RD***
	§	***JUDICIAL DISTRICT COURT***
V.		
THE STATE OF TEXAS, APPELLEE	***§***	***ANDERSON COUNTY, TEXAS***

MEMORANDUM OPINION

Vaughntrell Andwon Cummings appeals his conviction for evading arrest or detention with a vehicle. In a single issue, Appellant contends that the State failed to prove venue. We affirm.

BACKGROUND

Appellant was charged by indictment with evading arrest or detention with a motor vehicle on December 14, 2014 in Anderson County, Texas. He pleaded "not guilty" and the matter proceeded to a jury trial. At trial, the evidence showed that during the evening hours of December 14, Anderson County Sheriff's Deputy Michael Skinner was on patrol in his marked vehicle traveling down Palestine Avenue "into the city." Skinner testified he was on routine "patrolling in the county" when he observed a black male, later identified as Appellant, and a white male engaged in what Skinner believed to be an altercation. Skinner testified the altercation took place in a parking lot, which is shared by two gas stations known as the Mini-Mart and Brianna's, on Palestine Avenue.

Deputy Skinner turned his vehicle around to investigate. He pulled into the parking lot and parked behind a black sedan. Skinner testified that he exited the vehicle and asked Appellant "what was going on." Appellant responded that "everything was okay." Skinner

motioned for Appellant to approach, but Appellant got into the black sedan and drove away. Skinner ran to his patrol vehicle, activated the vehicle's lights and sirens, and pursued Appellant. Skinner testified that he chased Appellant through the city, but was unable to catch Appellant. Skinner testified that he ended his pursuit on Lacy Street after he observed Appellant's taillights "actually right out here by the courthouse[.]" Skinner stated that after Appellant "crested hill that was it." Although he was not a "Palestine Police Officer" and was unfamiliar with the city's speed limits, Skinner believed he traveled at a high rate of speed during the pursuit. Skinner later identified Appellant through old booking photographs. An Anderson County Sheriff's investigator, Brian Chason, discovered that the black sedan was registered to Appellant.

The jury found Appellant guilty of evading arrest or detention in a vehicle. Appellant pleaded true to an enhancement paragraph and the jury assessed punishment at imprisonment for eighteen years. This appeal followed.

VENUE

In Appellant's sole issue, he argues that the State failed to meet its burden of proving Anderson County as the proper venue, and that the failure to produce such evidence harmed Appellant.

Standard of Review and Applicable Law

The State bears the burden of proving venue by a preponderance of the evidence. TEX. CODE CRIM. PROC. ANN. art. 13.17 (West 2015); ***Fulmer v. State***, 401 S.W.3d 305, 317 (Tex. App.—San Antonio 2013, pet ref'd). A reviewing court must presume venue was proven at trial unless venue was disputed or the record affirmatively shows the contrary. TEX. R. APP. P. 44.2(c)(1); ***Schmutz v. State***, 440 S.W.3d 29, 35 (Tex. Crim. App. 2014). The Court of Criminal Appeals has held that (1) venue is not an element of the offense, (2) failure to prove venue does not result in acquittal, and (3) failure to prove venue does not implicate a structural or constitutional error. ***Schmutz***, 440 S.W.3d at 35-39.

Venue issues are subject to the harm analysis described in Texas Rule of Appellate Procedure 44.2(b), which states that any other error, defect, irregularity, or variance that does not affect substantial rights must be disregarded. ***Id.***; TEX. R. APP. P. 44.2(b). A substantial right is affected when the error had a substantial and injurious effect or influence in determining the jury's verdict. *See* ***Motilla v. State***, 78 S.W.3d 352, 355 (Tex. Crim. App. 2002). In assessing

the likelihood that the jury's decision was adversely affected by the error, we consider everything in the record, including any testimony or physical evidence admitted for the jury's consideration, the nature of the evidence supporting the verdict, the character of the alleged error, and how it might be considered in connection with other evidence in the case. ***Id***. We may also consider the jury instructions, the State's theory and any defensive theories, closing arguments, voir dire, and whether the State emphasized the error. ***Id***.

Analysis

On appeal, Appellant argues that we should render a judgment of acquittal because the State failed to prove venue. However, the record does not indicate that Appellant disputed venue at trial. Accordingly, we must look to the record for evidence affirmatively disproving venue. *See* TEX. R. APP. P. 44.2(c)(1); *see also* ***Schmutz***, 440 S.W.3d at 35.

Appellant does not direct us to any evidence in the record that affirmatively and conclusively shows that Anderson County was an improper venue. Nor does he suggest another venue. To the contrary, the record contains circumstantial evidence demonstrating that venue was proper in Anderson County. *See* ***Thompson v. State***, 244 S.W.3d 357, 362 (Tex. App.—Tyler 2006, pet. dism'd) (stating that venue can be proven by circumstantial evidence and jury may draw reasonable inferences from the evidence). Shortly after telling the jury he was an Anderson County deputy, Skinner testified that he was on "patrolling in the county." He referenced Palestine Avenue as in "the city" and also mentioned he was not a "Palestine Police Officer" when questioned about the speed of the chase. Skinner also identified two gas stations on Palestine Avenue by name when describing the location of the initial contact. He further testified that the pursuit ended on Lacy Street after he observed Appellant's taillights "right out here by the courthouse[.]"

Additionally, this Court can take judicial notice that Palestine is the county seat of Anderson County. *See* ***Sander v. State***, 52 S.W.3d 909, 917 (Tex. App.–Beaumont 2001, pet ref'd) (stating that an "appellate court can take judicial notice that a given town is a county seat, and that judicial notice can serve as proof that venue lies in that county for crimes alleged in that town"). Under the circumstances of this case, the record does not reveal any evidence that affirmatively and conclusively disproves venue. Thus, Appellant has failed to rebut the presumption of proper venue. *See* TEX. R. APP. P. 44.2(c)(1); *see also* ***Dill v. State***, 895 S.W.2d 507, 508 (Tex. App.–Fort Worth 1995, no pet.).

Moreover, even assuming that the State failed to prove venue, any error would be harmless. *See* ***Schmutz***, 440 S.W.3d at 39. The indictment was handed down by an Anderson County grand jury and alleged that the offense occurred in Anderson County. There is no indication that the State was forum shopping or attempting to taint the trial process. Appellant had notice he would be tried in Anderson County. There is no indication in the record that Appellant was misled by the venue allegation, inconvenienced by trial in Anderson County, or prevented from presenting a defense. Nor is there any suggestion that the Anderson County jury was anything but impartial. *See* TEX. CODE CRIM. PROC. ANN. art. 31.03(a)(1) (West 2006) (stating that trial court may order change of venue when there is so great a prejudice against the defendant in the county where prosecution is commenced that he cannot obtain a fair and impartial trial). The reasonableness of the choice of venue is in part determined by whether the criminal acts in question bear "substantial contacts" with that venue. ***Thompson***, 244 S.W.3d at 366; *see* ***Soliz v. State***, 97 S.W.3d 137, 143 (Tex. Crim. App. 2003). In this case, as previously discussed, the record contains sufficient circumstantial evidence demonstrating that the offense occurred in Anderson County. Moreover, because venue is not an element of the offense, the error did not prejudice the jury's decision making process. *See* ***Thompson***, 244 S.W.3d at 366. Accordingly, consideration of the record as a whole gives us fair assurance that the alleged error did not have a substantial and injurious effect or influence on the jury's verdict. *See* ***Motilla***, 78 S.W.3d at 355. We overrule Appellant's sole issue.

DISPOSITION

Having overruled Appellant's sole issue, we ***affirm*** the trial court's judgment.

BRIAN HOYLE
Justice

Opinion delivered April 19, 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

APRIL 19, 2017

NO. 12-16-00122-CR

VAUGHNTRELL ANDWON CUMMINGS,
Appellant
V.
THE STATE OF TEXAS,
Appellee

Appeal from the 3rd District Court
of Anderson County, Texas (Tr.Ct.No. 32007)

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.

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