Opinion filed February 8, 2018

In The

Eleventh Court of Appeals

No. 11-17-00044-CR

KEITH SCHLEY WALKER, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the 118th District Court
Howard County, Texas
Trial Court Cause No. 14886

M E M O R A N D U M O P I N I O N

The jury found Keith Schley Walker guilty of evading arrest with a motor vehicle.[1] After Appellant pleaded "true" to an enhancement allegation for a prior felony offense, the jury assessed Appellant's punishment at confinement for eighteen years. On appeal, Appellant asserts that the State adduced insufficient evidence for the jury to convict him of the charged offense. We affirm.

[1]TEX. PENAL CODE ANN. § 38.04(a) (West 2016).

I. *Charged Offense*

The grand jury indicted Appellant for the third-degree felony offense of evading arrest and alleged that Appellant, while using a vehicle, intentionally fled from Andrew Garcia, a person that Appellant knew was a peace officer who was attempting lawfully to arrest or detain him. A person commits the offense of evading arrest if he intentionally flees from a person that he knows to be a peace officer attempting lawfully to arrest or detain him. PENAL § 38.04(a). This offense becomes a third-degree felony, punishable by imprisonment for any term between two and ten years and a fine not to exceed $10,000, if the person uses a vehicle while in flight. *Id.* § 12.34 (West 2011), § 38.04(b)(2)(A) (West 2016).

II. *Evidence at Trial*

Andrew Garcia, a police officer with the Big Spring Police Department, along with Michael Calley, a corporal with the Big Spring Police Department responded to a disturbance call at the TA truck stop in Big Spring. When Officer Garcia, who was in uniform and driving a marked patrol vehicle, arrived at the truck stop, he spoke with the complainant, who was a truck stop employee. The employee said that truck drivers had complained to her that a man in a purple "big rig" was causing fights and being a nuisance. She told Officer Garcia that she wanted the man "off the property."

Corporal Calley, who also was in uniform and driving a marked patrol vehicle, saw two truck drivers who pointed in the direction of a "purple Peterbilt" truck and a man who stood partly inside the truck. The man did not want to engage or talk to the police, and he tried to "slam" the driver's side door on Corporal Calley as he approached. Two men "tussle[d]" over the door. Officer Garcia also saw two truck drivers who pointed in the direction of a man standing partly inside a purple big rig that had the engine "running." Officer Garcia noticed that Corporal Calley and the man were "in a fight, a tug of war" over the driver's side door of the truck.

Officer Garcia instructed the man to get out of the truck. To try to deescalate the situation, Corporal Calley gestured for Officer Garcia to "back up just a little bit" because the man might be "scared." When Officer Garcia backed up, the man "revved the engine," "slammed it into gear," and "started to take off." The man, later identified as Appellant, proceeded to drive through the parking lot. Officer Garcia turned on the lights and siren on his patrol vehicle, to indicate to Appellant to stop. As Appellant drove off, Corpora Calley briefly chased him on foot but did not have any success in catching him. He then notified dispatch that they were in pursuit of a motor vehicle. Appellant exited the parking lot and later entered Interstate 20 headed eastbound.

Corporal Calley and Officer Garcia, as well as personnel from other agencies, pursued Appellant on Interstate 20 and reached speeds of up to eighty-five miles per hour. The pursuit lasted approximately fifty-three and fifty-four minutes. Matthew Buske, a deputy with the Howard County Sherriff's Office, participated in the pursuit. He observed that, when Appellant had finally been stopped and arrested, Appellant appeared to be intoxicated. Appellant was transported back to Howard County by Officer Garcia, who also observed that Appellant appeared to be intoxicated.

III. *Analysis*

Appellant asserts in a single issue that the State adduced insufficient evidence. We review the sufficiency of the evidence under the standard set forth in *Jackson v. Virginia*, 443 U.S. 307 (1979). *Brooks v. State*, 323 S.W.3d 893, 912 (Tex. Crim. App. 2010). Under this standard, we review all of the evidence in the light most favorable to the jury's verdict and decide whether any rational jury could have found the essential elements of the offense beyond a reasonable doubt. *Jackson*, 443 U.S. at 319. We also measure the sufficiency of the evidence by the elements of the offense as defined in a hypothetically correct jury charge for the case. *Malik v. State*,

953 S.W.2d 234, 240 (Tex. Crim. App. 1997). A hypothetically correct jury charge is one that "accurately sets out the law, is authorized by the indictment, does not unnecessarily increase the State's burden of proof or unnecessarily restrict the State's theories of liability, and adequately describes the particular offense for which the defendant was tried." *Id.*

A. Officer Garcia and Corporal Calley had reasonable suspicion to detain Appellant to investigate the disturbance at the TA truck stop.

The State argued that Appellant fled from Officer Garcia, who Appellant knew was a peace officer because of the uniform that he wore and the patrol vehicle that he drove, and that Officer Garcia was attempting to detain him to investigate a disturbance at the TA truck stop. We agree.

Police and citizens may engage in three distinct types of interactions: consensual encounters, investigative detentions, and arrests. *Wade v. State*, 422 S.W.3d 661, 667 (Tex. Crim. App. 2013); *State v. Woodard*, 341 S.W.3d 404, 410–11 (Tex. Crim. App. 2011). A police officer may briefly detain a person to investigate possible criminal activity, even if there is no probable cause, if the officer has reasonable suspicion to believe that there is possible criminal activity. *Terry v. Ohio*, 392 U.S. 1, 22 (1968); *Ford v. State*, 158 S.W.3d 488, 492 (Tex. Crim. App. 2005). A police officer has reasonable suspicion if he has specific, articulable facts that, when combined with their rational inferences, would lead the officer to reasonably conclude that a person is, has been, or soon will be engaged in criminal activity. *Ford*, 158 S.W.3d at 492. Under this standard, we evaluate whether there is an objective reason for the detention by looking at the totality of the circumstances, and we ignore the subjective intent of the officer. *Wade*, 422 S.W.3d at 668.

The State adduced evidence that Officer Garcia, a uniformed officer in a marked patrol vehicle, responded to the disturbance at the truck stop, as did Corporal Calley, who also was in uniform and in a marked patrol vehicle.

Officer Garcia spoke to a truck stop employee, who said that truck drivers had complained to her that a man in a purple "big rig" was causing fights and was being a nuisance. She wanted the man "off the property." Corporal Calley saw two truck drivers who pointed in the direction of a "purple Peterbilt" truck and Appellant, who stood partly inside the truck. Appellant tried to close the driver's side door of the truck on Corporal Calley, and the two men "tussle[d]" over the door. Corporal Calley did not know if Appellant was intoxicated or high or scared.

Both officers explained at trial that they observed unusual behavior from Appellant, that he appeared to be intoxicated, and that he might have been involved, based on the complainant's and the truck drivers' communications, in the disturbances at the truck stop. Because under the totality of the circumstances, Officer Garcia and Corporal Calley outlined specific, articulable facts that, when combined with their rational inferences, would lead them to reasonably conclude that Appellant was, had been, or soon would be engaged in criminal activity, they outlined objective reasons to detain Appellant. *See Ford*, 158 S.W.3d at 492; *Wade*, 422 S.W.3d at 668. We hold that Officer Garcia and Corporal Calley had reasonable suspicion to detain Appellant.

B. The State adduced sufficient evidence from which a rational jury could have found beyond a reasonable doubt that Appellant had committed the offense of evading arrest with a motor vehicle.

In his sufficiency-of-the-evidence issue, Appellant claims that the State adduced insufficient evidence to prove that he committed the offense of evading arrest with a motor vehicle. A person commits the offense of evading arrest if he intentionally flees from a person that he knows to be a peace officer attempting lawfully to arrest or detain him. PENAL § 38.04(a). The State adduced evidence that Officer Garcia, a uniformed peace officer in a marked patrol vehicle, arrived at the

truck stop in response to a disturbance. Corporal Calley, also a uniformed peace officer in a marked patrol vehicle, responded to the same call.

Two truck drivers pointed in the direction of a "purple Peterbilt" truck where Appellant stood partly inside the truck. When Corporal Calley neared Appellant to make contact, the two men "tussle[d]" over the door, and Appellant tried to "slam" the door on Corporal Calley. Officer Garcia saw that Appellant was standing partly inside a purple big rig, with the engine "running," and that Corporal Calley and Appellant were "in a fight, a tug of war" over the driver's side door of the truck.

Officer Garcia instructed Appellant to get out of the truck, and Corporal Calley gestured for Officer Garcia to back off because Appellant might be scared. However, Appellant did not exit the truck, and when Officer Garcia backed off, Appellant "revved the engine" and "started to take off." Officer Garcia turned on the lights and siren on his patrol vehicle, which indicated that Appellant should stop. Corporal Calley and Officer Garcia, as well as officers from other agencies, pursued Appellant eastbound on Interstate 20; chase lasted approximately fifty-three or fifty-four minutes.

As the factfinder, the jury determines the weight and credibility of the witnesses' testimony. *Sharp v. State*, 707 S.W.2d 611, 614 (Tex. Crim. App. 1986); *Isham v. State*, 258 S.W.3d 244, 248 (Tex. App.—Eastland 2008, pet. ref'd). The trier of fact may believe all, some, or none of a witness's testimony because the factfinder is the sole judge of the weight and credibility of the witnesses. *Sharp*, 707 S.W.2d at 614; *Isham*, 258 S.W.3d at 248. If the evidence raises any conflicting inferences, we presume that the trier of fact resolved such conflicts in favor of the verdict. *Jackson*, 443 U.S. at 326; *Brooks*, 323 S.W.3d at 899. We hold that a rational jury could have found beyond a reasonable doubt that Appellant evaded arrest from Officer Garcia and Corporal Calley, who he knew were peace officers that had attempted to detain him, when he drove away from the TA truck stop and

fled down Interstate 20 in a nearly hour-long pursuit by police. We overrule Appellant's sufficiency-of-the-evidence issue.

IV. *This Court's Ruling*

We affirm the judgment of the trial court.

MIKE WILLSON
JUSTICE

February 8, 2018

Do not publish. *See* TEX. R. APP. P. 47.2(b).

Panel consists of: Willson, J.,
Bailey, J., and Wright, S.C.J.[2]

[2]Jim R. Wright, Senior Chief Justice (Retired), Court of Appeals, 11th District of Texas at Eastland, sitting by assignment.