AFFIRM; and Opinion Filed February 27, 2017.

In The
Court of Appeals
Fifth District of Texas at Dallas

No. 05-15-01440-CR

No. 05-15-01441-CR

KAFIR DESHAWN KABBARA, JR., Appellant
V.
THE STATE OF TEXAS, Appellee

On Appeal from the 292nd Judicial District Court
Dallas County, Texas
Trial Court Cause Nos. F-14-60312-V, F-14-60313-V

MEMORANDUM OPINION

Before Justices Bridges, Evans, and Schenck
Opinion by Justice Schenck

Kafir Deshawn Kabbara, Jr. appeals his convictions for aggravated assault with a deadly weapon and evading arrest or detention by vehicle. In his first issue, he argues the evidence was legally insufficient to support his conviction for evading arrest because the state did not prove he was pursued by a federal special investigator. In his second issue, appellant contends the trial court abused its discretion by overruling appellant's objection that a witness's testimony during the State's direct examination was "not a response to the question." We affirm the trial court's judgment. Because all issues are settled in law, we issue this memorandum opinion. TEX. R. APP. P. 47.4.

FACTUAL AND PROCEDURAL BACKGROUND

On November 17, 2014, Officers Jeffrey Jacobs and Leah Risse of the Dallas Police Department were in their patrol car when they received a radio broadcast about an aggravated

offense nearby. Soon after, the officers observed appellant, whose appearance, location, and vehicle fit the description of the suspect, his location, and his vehicle. Officers Jacobs and Risse pursued appellant and were quickly joined by other police officers in marked police cars with overhead lights and sirens activated. Appellant led the officers on a high-speed chase before eventually hitting a large pothole and colliding with another vehicle. Two adult occupants of that vehicle were severely injured; a child also in the car was unharmed.

Appellant was charged with aggravated assault with a deadly weapon and evading arrest or detention by vehicle. Appellant pleaded not guilty to both offenses. A jury found appellant guilty of both offenses and sentenced him to 30 years' confinement in the assault case and 12 years' confinement in the evading-arrest case, which the trial court ordered to be served concurrently.

DISCUSSION

I. Sufficiency of the Evidence

Section 38.04 of the Texas Penal Code provides a person commits evading arrest or detention if he "intentionally flees from a person he knows is a peace officer or federal special investigator attempting lawfully to arrest or detain him." TEX. PENAL CODE ANN. § 38.04(a) (West 2016). The indictment alleged appellant knew Officer Risse was "a peace officer **and** federal special investigator." The jury charge tracked the indictment's conjunctive language rather than the disjunctive language of section 38.04. Appellant contends the charge therefore required the jurors to find Officer Risse was both a police officer and a "federal special investigator" and that because there was no evidence at trial to support that finding, the evidence was legally insufficient to support the verdict.

In conducting a sufficiency review, we examine all 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 offense beyond a reasonable doubt. *Jackson v. Virginia*, 443 U.S. 307,

319 (1979); *Matlock v. State*, 392 S.W.3d 662, 667 (Tex. Crim. App. 2013). We measure the sufficiency of the evidence by the elements of the offense as defined by the hypothetically correct jury charge for the case. *Malik v. State*, 953 S.W.2d 234, 240 (Tex. Crim. App. 1997) (en banc). A hypothetically correct jury charge 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 appellant was tried. *Id.*

Here, a hypothetically correct charge would have allowed the jury to find appellant committed the offense if they found appellant knew Officer Risse was either a peace officer or a federal special investigator. *See* TEX. PENAL CODE ANN. § 38.04; *see also Ronk v. State*, 250 S.W.3d 467, 470 (Tex. App.—Waco 2008, pet. ref'd) ("Although the jury charge in this case submitted these alternatives in the conjunctive, a hypothetically correct jury charge would have submitted them in the disjunctive."). Because appellant does not dispute Officer Risse was a peace officer, his complaint is without merit. We overrule appellant's first issue.

II. Objection to Witness's Testimony

In his second issue, appellant contends that the trial court erred in overruling his defense counsel's objection to the testimony of Officer Jacobs. During the direct examination of Officer Jacobs, the following exchange occurred.

> STATE: And where did he go when he got on Greenspan?
>
> OFFICER JACOBS: Well, when he got on Greenspan, he was driving awfully fast, northbound Greenspan. We had good distance from him because we didn't know what was going to go on because we had traffic coming our way—
>
> DEFENSE COUNSEL: Objection, Judge. This is not a response to the question.
>
> COURT: Overruled.

Appellant argues Officer Jacobs interjected extraneous material into his response and that because even the question itself was of such a non-responsive nature so as to be self-apparent,

the trial court acted without reference to any guiding rules of principles, thus abusing its discretion.

We have previously held that not every unresponsive answer should be stricken. *Smith v. State*, 763 S.W.2d 836, 841 (Tex. App.—Dallas 1988, pet. ref'd). A "nonresponsive" objection by itself merely informs the trial court why the objection was not made prior to the answer being given. *Id.* In order to properly exclude evidence or obtain an instruction to disregard, a party must address in its objection both the non-responsiveness and the inadmissibility of the answer. *Id.* Because appellant failed to argue on what basis Officer Risse's statements were inadmissible, we hold that appellant waived any complaint about the trial court's decisions to overrule appellant's objection. *See Jackson v. State*, 889 S.W.2d 615, 617 (Tex. App.—Houston [14th Dist.] 1994, pet. ref'd) (holding that an appellant's general complaint, which the trial court understood to challenge the responsiveness of the answer failed to preserve any complaint about the trial court's failure to instruct the jury to disregard). Accordingly, we overrule appellant's second issue.

CONCLUSION

We affirm the trial court's judgment.

/David J. Schenck/
DAVID J. SCHENCK
JUSTICE

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TEX. R. APP. P. 47

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Court of Appeals
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JUDGMENT

KAFIR DESHAWN KABBARA, JR., Appellant

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Opinion delivered by Justice Schenck, Justices Bridges and Evans participating.

Based on the Court's opinion of this date, the judgment of the trial court is **AFFIRMED**.

Judgment entered this 27th day of February, 2017.

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