AFFIRM; and Opinion Filed March 23, 2018.

In The
Court of Appeals
Fifth District of Texas at Dallas

No. 05-16-01226-CR

KAELAN STEPHENS, Appellant
V.
THE STATE OF TEXAS, Appellee

On Appeal from the 194th Judicial District Court
Dallas County, Texas
Trial Court Cause No. F-1420889-M

MEMORANDUM OPINION

Before Justices Francis, Evans, and Boatright
Opinion by Justice Boatright

A jury convicted appellant Kaelen Stephens of aggravated robbery and assessed his punishment at life in prison and a $10,000 fine. On appeal he argues that the trial court erroneously admitted evidence of an extraneous offense, refused to suppress evidence gleaned from his improperly seized cell phone, and denied his request for an accomplice witness jury instruction. Appellant also contends the evidence is insufficient to support his conviction. We affirm.

Background

Ryan Lara was shot and killed outside his family's home while he was moving his father's truck. Several days later, Duncanville Police Detective Jeff Pollock was surveilling the apartment of Tyler Wiley, whom Pollock believed was involved in the Lara murder. While Pollock was watching, a Dodge Charger pulled up; Wiley got out and entered his apartment. Pollock directed fellow Duncanville Detective Chance Hill to follow the Charger while he remained with Wiley.

Hill followed in an unmarked car and observed that the vehicle had no rear license plate. When he pulled up next to the Charger at a light, Hill also witnessed the vehicle's passenger riding without a seatbelt, and he radioed DeSoto police to stop the Charger based on those traffic violations. Following the stop, the police arrested the driver, Trevone Payne, on outstanding warrants and the passenger, appellant Kaelan Stephens, for failing to wear a seatbelt. The police drove both men to the DeSoto jail, where they were booked in and their possessions were taken and inventoried according to DeSoto department procedure.

That same day, Wiley was arrested and taken to the DeSoto jail. Detective Pollock questioned him, and Wiley admitted his involvement in the Lara murder. He also told Pollock that he was with three other men that night: Torrey Goodson was driving the car, appellant was in the front passenger seat, and Marcus Rice was sitting in the back seat with Wiley. He told Pollock that the four of them were "out jugging," or robbing people, that night. When they were in front of the Lara house, he and Rice jumped out of the car holding guns. After Lara was shot, they returned to the car, and Goodson drove away. Lara's brother ran after the car shooting, and according to Wiley, appellant leaned out the window and shot back at Lara's brother.

The Charger was impounded, and warrants were issued for it and for the cell phones belonging to appellant and Payne. Police discovered the murder weapon in the Charger's trunk. They extracted photographs, videos, and text messages from the cell phones.

Eventually, all four men were charged with capital murder. At trial, jurors rejected the capital murder charge, but they convicted appellant of aggravated robbery. He was sentenced to life imprisonment and assessed a fine of $10,000.

Sufficiency of Evidence of Theft

In his first issue, appellant contends the evidence is insufficient to support his conviction for aggravated robbery. The jury was instructed to find appellant guilty of the lesser included offense of aggravated robbery if appellant:

> acting alone or as a party, as that term is hereinbefore defined, did with the intent to promote or assist the commission of the offense, encourage, aid, or attempt to aid the others, or any one or combination of the others, *while in the course of committing theft* of property and with intent to obtain or maintain control of the property, intentionally or knowingly threaten or place RYAN LARA in fear of imminent bodily injury or death, and [appellant] used or exhibited a deadly weapon. (Emphasis added.)

Appellant argues that the State failed to offer evidence of the essential element of theft. He argues further that the indictment did not allow for evidence of attempted theft to serve as the felony component of the robbery. However, the phrase "while in the course of committing theft" is defined within the court's charge to mean "conduct that occurs in an attempt to commit, during the commission, or in immediate flight after the attempt of commission of theft." *See* Tex. Penal Code Ann. § 29.01(1) (West 2011). Thus, a completed theft is not necessary to satisfy that element of aggravated robbery; evidence of attempted theft is sufficient.

We review appellant's sufficiency challenge by examining the evidence in the light most favorable to the verdict to determine whether any rational trier of fact could have found this essential element beyond a reasonable doubt. *Jackson v. Virginia*, 443 U.S. 307, 319 (1979). Appellant contends the only evidence of attempted theft was Lara's stepmother's testimony. And Valentina Ramirez did testify that she was lying down when she heard "noises" outside. When she stepped out the front door she found her husband holding Lara in his arms, and Lara "was just trying to say that somebody had tried to rob him." But this is not the only evidence of an attempted theft. Detective Pollack testified that more than one family member spoke to him about Lara's last words and told him that Lara said either "they were trying to take it" or "they were trying to rob me." Pollack also testified that Wiley told him what the four men were doing that night: Wiley said they were "out jugging" and, when asked for an explanation of that term by Pollack, Wiley explained that it meant they were "robbing people or hitting a lick." Finally, Wiley also told the detective that the two men in the back seat got out of the car in front of the victim's house while

he was moving his father's vehicle. This was not a drive-by shooting; the evidence establishes that the participants had more in mind.

Viewing all the evidence in the light most favorable to the verdict, a rational factfinder could have concluded beyond a reasonable doubt that those men attempted to steal property from Lara when they got out of the car. The record establishes that appellant assisted the group's attempt to rob Lara: he rode with them as they identified Lara as a potential victim, and he fired his revolver at Lara's brother as they fled the scene. Appellant, therefore, was a party to the attempted theft. *White v. State*, 671 S.W.2d 40, 43 (Tex. Crim. App. 1984). The evidence is sufficient to support the challenged element, and we overrule appellant's first issue.

Evidence of Extraneous Offense

In his second issue, appellant complains that the trial court erroneously admitted evidence of an extraneous offense through a series of Kik text messages between appellant and Payne that occurred the night of the charged incident. Police discovered the relevant exchange on Payne's phone. Initially, appellant sent Payne a link to a television news report of Lara's murder. Referring to Lara, Payne responded:

> Payne: . . . that [is] somebody else, . . . , that is not him.
>
> Appellant: No, you wasn't with us on this one, I'm saying you got that one from last night on news too.

Appellant objected to admission of the exchange, arguing that it implied that the group—or at least appellant—had been involved in another offense, which included Payne, the night before. The State argued that the reference was contextual to appellant's admission to the Lara offense. We agree.

Evidence of an extraneous offense committed by the defendant is generally inadmissible in the guilt-innocence phase of trial. *Moses v. State*, 105 S.W.3d 622, 626 (Tex. Crim. App. 2003). However, such evidence may be admissible if it contains relevance beyond character conformity.

Id. When an offense is closely interwoven with the case on trial, proof of those facts can be proper to show the context in which the act occurred. *Moreno v. State*, 195 S.W.3d 321, 327 (Tex. App.—Houston [14th Dist.] 2006, pet. ref'd). Contrary to appellant's argument, contextual evidence need not refer to the specific offense with which a defendant is charged. It can be just as significant when the charged offense is one of a series of related offenses with overlapping facts. *See, e.g., id.* at 327-28 (addressing context in series of drug transactions). Contextual evidence is admissible to the extent necessary for the jury to understand the offense. *Wyatt v. State*, 23 S.W.3d 18, 25 (Tex. Crim. App. 2000). And the jury is entitled to know all the relevant facts and circumstances surrounding the charged offense. *Moreno v. State*, 721 S.W.2d 295, 301 (Tex. Crim. App. 1986). In this case, the jury was entitled to know that appellant had admitted participating in Lara's murder, and we conclude his admission required the minimal context found in the text exchange with Payne. The trial court did not abuse its discretion by admitting the text messages.

We overrule appellant's second issue.

Seizure of Appellant's Cell Phone

Appellant filed a motion to suppress any evidence derived from his cell phone, alleging it was twice seized illegally. The trial court ruled that (a) the stop of the Charger was lawful given the officer's testimony that the passenger (Stephens) was not wearing a seat belt and the vehicle had no license plate; (b) Stephens's arrest was valid based on his failure to wear a seat belt, and his phone was lawfully placed into the police department's property room when he was booked in; (c) seizure of information from the phone was proper because a warrant was issued; and (d) a Dallas detective's taking the phone from the property room prior to obtaining the warrant was proper. Appellant re-urges his illegal seizure argument in his third issue. We will sustain the trial court's ruling if it is reasonably supported by the record and is correct on any theory of law applicable to the case. *Turrubiate v. State*, 399 S.W.3d 147, 150 (Tex. Crim. App. 2013). We review the trial court's application of law to the facts de novo. *Id.*

Appellant argues his phone was improperly seized for the first time when he was arrested and booked into the DeSoto jail. He contends that this seizure fails to meet any legal exception to the requirement of a warrant. But we have acknowledged United States Supreme Court precedent concluding that constitutional prohibitions of unreasonable seizures do not apply to authorized police inventory procedures. *Nash v. State*, 682 S.W.2d 338, 339 (Tex. App.—Dallas 1984, no pet.) (citing *Illinois v. Lafayette*, 462 U.S. 640, 643 (1983)). "[N]either a warrant nor probable cause is required for a valid inventory search when a person is initially placed in jail."). Identifying and maintaining personal items removed from an arrestee protects the police against false claims and protects the arrestee against theft of that property; these protections outweigh the arrestee's privacy interest in the items seized. *Id.* And the arrestee's expectation of privacy in his personal belongings remains diminished until his release from custody. *Oles v. State*, 993 S.W.2d 103, 110 (Tex. Crim. App. 1999). Therefore, if appellant was lawfully arrested and placed in jail, the administrative removal of his cell phone upon book-in was not an unlawful seizure.

Appellant does not challenge the Charger's stop other than to call it pretextual, arguing the officers were really motivated by their desire to identify the car's inhabitants, not by traffic violations. However, an objectively valid traffic stop is not unlawful merely "because the detaining officer had some ulterior motive for making it." *Crittenden v. State*, 899 S.W.2d 668, 674 (Tex. Crim. App. 1995). Here, the officers involved in the stop testified that the passenger in the car, Stephens, was observed not wearing a seat belt. Riding in a passenger vehicle while it is being operated without being secured by a seat belt is a traffic offense. TEX. TRANSP. CODE ANN. § 545.413(a) (West Supp.2017). A police officer is justified in stopping a vehicle once he observes a violation of traffic laws. *Carmouche v. State*, 10 S.W.3d 323, 329 n. 6 (Tex. Crim. App. 2000). And we have concluded that an officer may arrest someone for failure to wear a seat belt. *State v. West*, 20 S.W.3d 867, 871 (Tex. App.—Dallas 2000, pet. ref'd). We conclude that

appellant was lawfully stopped and arrested; accordingly, the seizure of his phone when being booked into jail was not unlawful.

Appellant argues his phone was impermissibly seized the second time when Dallas Detective Crystal Continez, who had been working with Pollock on a robbery investigation, obtained the phone from the DeSoto police and took it to Dallas. The record establishes that Continez checked the phone out from the property room according to department procedures. She testified she did not look at the contents of the phone until after she had obtained a search warrant to do so, and appellant provided no evidence to the contrary. Because the phone remained in police custody at all times after appellant's arrest, Continez's removal of the phone was not an impermissible seizure.

The trial court correctly denied appellant's motion to suppress, and we overrule his third issue.

Accomplice Witness Instruction

In his fourth issue, appellant argues the trial court erred by denying his request for an accomplice witness instruction under article 38.14 of the Code of Criminal Procedure. That statute provides:

> A conviction cannot be had upon the testimony of an accomplice unless corroborated by other evidence tending to connect the defendant with the offense committed; and the corroboration is not sufficient if it merely shows the commission of the offense.

TEX. CRIM. PROC. CODE ANN. art. 38.14 (West 2005). Appellant contends that when Detective Pollock testified and implicated appellant in the group of four men "out jugging" that night, it amounted to testimony by Wiley himself. Wiley was appellant's accomplice as a matter of law because he was charged with the same capital murder as appellant. *Zamora v. State*, 411 S.W.3d 504, 510 (Tex. Crim. App. 2013). Thus, had Wiley testified at appellant's trial, his testimony would have needed to be corroborated before the jury could rely on it to convict appellant. TEX. CRIM.

PROC. CODE ANN. art. 38.14. And the jury would need to be instructed that this corroboration was necessary. *Zamora*, 411 S.W.3d at 510.

But Wiley did not testify, and the plain language of article 38.14 does not require corroboration of an accomplice's extrajudicial statements. *Bingham v. State*, 913 S.W.2d 208, 213 (Tex. Crim. App. 1995). Where the statute does not require corroboration, no jury instruction is required. *Id.* We overrule appellant's fourth issue.

Conclusion

We affirm the trial court's judgment.

/Jason Boatright/
JASON BOATRIGHT
JUSTICE

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Court of Appeals
Fifth District of Texas at Dallas

JUDGMENT

KAELAN STEPHENS, Appellant	On Appeal from the 194th Judicial District Court, Dallas County, Texas
No. 05-16-01226-CR V.	Trial Court Cause No. F-1420889-M.
	Opinion delivered by Justice Boatright.
THE STATE OF TEXAS, Appellee	Justices Francis and Evans participating.

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

Judgment entered this 23rd day of March, 2018.