

Affirmed and Memorandum Opinion filed December 14, 2010.



In The

**Fourteenth Court of Appeals**

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NO. 14-09-00937-CR

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**ARRINGTON PERRY, Appellant**

**V.**

**THE STATE OF TEXAS, Appellee**

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**On Appeal from the 248th District Court  
Harris County, Texas  
Trial Court Cause No. 1196641**

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**MEMORANDUM OPINION**

A jury convicted appellant Arrington Perry of aggravated robbery and assessed punishment at twenty-two years' confinement in the Texas Department of Criminal Justice, Institutional Division and a \$2,000 fine. In two issues, appellant challenges the legal and factual sufficiency of the evidence supporting his conviction. We affirm.

**FACTUAL AND PROCEDURAL BACKGROUND**

At 6:50 a.m., on December 22, 2008, Sarah Long, the complainant, was returning to her apartment from the gym. Long parked her car, got out with her purse and some shopping bags, and walked to the gate. The apartment complex was gated and required a

code to enter. The code box was malfunctioning and Long entered the code several times trying to open the gate. While Long was standing at the gate, she noticed a male, wearing all black, walking on the street toward her. She turned around to see who it was, and appellant was standing about a foot behind her holding a gun in his left hand. Twice he ordered Long to give him her purse, but she refused each time. Appellant grabbed the strap of her purse and tried to pull it from her, but she hooked her arm, preventing him from taking it. Long and appellant struggled over the purse, and Long started screaming to attract attention.

Appellant struck the back of Long's hands with the butt of the gun trying to get her to let go of the purse. Long eventually let go, and appellant ran away with her purse. Long followed appellant and saw him get into the passenger side of a car that was waiting on the street. Long caught up to appellant and grabbed the back of his coat trying to pull him out of the car. She was able to grab the hat off appellant's head and left it in the street. Long was able to get the license plate number of the vehicle and memorized it by repeating it out loud. A neighbor who had heard the struggle wrote it down for her, and Long called the police.

She described the suspect to Officer Scott of the Houston Police Department ("HPD") as a black male, in his early to mid-twenties, about five feet seven inches to six feet tall, 150 to 160 pounds, medium brown skin, with his hair in cornrows, and wearing a black coat and black pants. Long gave the license plate number of the vehicle and the hat she had pulled off of appellant's head to the police. Officer Scott entered the license plate number into a database. The vehicle was a Chevrolet Malibu registered to appellant's grandmother on Bostic.

Officer Duncan and his partner went to the address on Bostic in an unmarked vehicle, but did not see the car there. They left and returned about ten minutes later and saw the car backed into the driveway. About four or five minutes later, they saw appellant leave in the vehicle and followed him. When appellant pulled into a driveway,

Officer Duncan and his partner, who were in full uniform, approached appellant with their weapons drawn. Appellant put the car in reverse, backed up, and drove away. They followed appellant, and marked units, with lights and sirens on, joined the pursuit. Appellant ran a stop sign and hit a pickup truck, but continued driving and returned to the house on Bostic. Appellant drove up the driveway behind the house, and struck the house and a chain-link fence. Appellant rammed the fence several times trying to drive through it, and the vehicle became lodged between the fence and the house. After several minutes, the police removed appellant from the car.

Officer Gray, who is a K-9 handler with HPD, arrived at the scene on Bostic with his canine partner Rocket. After searching the house for other suspects, Officer Gray was walking Rocket back to the car when Rocket identified some type of human odor underneath the house. Rocket pulled Officer Gray along the side of house and tried to crawl under the house. Officer Gray allowed Rocket to go under the house where he found Long's purse. A revolver was also found underneath the house next to the purse which Long identified as the same type, color, and size as the gun used during the robbery. It was "very much the gun that he used . . . to strike [her]."

Appellant was transported to the hospital. Later that day, Long went to the hospital where appellant was presented to her for identification. Long "could not make a 100 percent positive ID" because it was still dark when the incident happened, and she "was panicking and was focused on the weapon." However, appellant looked similar to the assailant and had the same characteristics Long had described to the police. The cap Long had grabbed off of appellant's head was submitted for DNA testing at the HPD Crime Lab. DNA analysis indicated that appellant's DNA was on the cap.

The jury found appellant guilty of aggravated robbery and assessed punishment at twenty-two years' imprisonment and a \$2,000 fine. This appeal followed.

## SUFFICIENCY OF THE EVIDENCE

In his first and second issues, appellant argues that the evidence is legally and factually insufficient to support his conviction because Long was unable to positively identify him as the assailant. While this appeal was pending, the Court of Criminal Appeals held that only one standard should be used to evaluate the sufficiency of the evidence in a criminal case: legal sufficiency. *Brooks v. State*, No. PD-0210-09, — S.W.3d —, 2010 WL 3894613, at \*1 (Tex. Crim. App. Oct. 6, 2010) (plurality opinion); *id.* at \*22 (Cochran, J., concurring). Accordingly, we review the sufficiency of the evidence in this case under a rigorous and proper application of the *Jackson v. Virginia*, 443 U.S. 307 (1979), legal sufficiency standard. *Brooks*, 2010 WL 3894613, at \*11 (plurality opinion).

When reviewing the sufficiency of the evidence, we view all of the evidence in the light most favorable to the verdict to determine whether the jury was rationally justified in finding guilt beyond a reasonable doubt. *Id.* at 5; *Williams v. State*, 235 S.W.3d 742, 750 (Tex. Crim. App. 2007). This court does not sit as a thirteenth juror and may not substitute its judgment for that of the fact finder by re-evaluating the weight and credibility of the evidence. *Brooks*, 2010 WL 3894613, at \*7; *Williams*, 235 S.W.3d at 750. We defer to the fact finder's resolution of conflicting evidence unless the resolution is not rational. *Brooks*, 2010 WL 3894613, at \*7 n.8, \*11. Our duty as a reviewing court is to ensure that the evidence presented actually supports a conclusion that the defendant committed the crime. *Williams*, 235 S.W.3d at 750.

A person commits the offense of robbery if, in the course of committing theft and with intent to obtain or maintain control of the property, he (1) intentionally, knowingly, or recklessly causes bodily injury to another, or (2) intentionally or knowingly threatens or places another in fear of imminent bodily injury or death. TEX. PENAL CODE ANN. § 29.02(a)(2) (West 2003). A robbery is aggravated if the person uses or exhibits a deadly weapon in the course of committing the robbery. *Id.* § 29.03(a)(2) (West 2003). A

firearm is a deadly weapon per se. *Id.* § 1.07(a)(17)(A) (West Supp. 2009); *Ex parte Huskins*, 176 S.W.3d 818, 820 (Tex. Crim. App. 2005).

When Long saw appellant at the hospital, she “could not make a 100 percent positive ID” of appellant. However, “positive” eye-witness testimony is not necessary to determine appellant’s identity. *See Earls v. State*, 707 S.W.2d 82, 85 (Tex. Crim App. 1986) (“Evidence as to the identity of the perpetrator of an offense can be proved by direct or circumstantial evidence.”); *Roberson v. State*, 16 S.W.3d 156, 167 (Tex. App.—Austin 2000, pet. ref’d) (“[I]dentity may be proven by inferences.”). Appellant had the same characteristics Long had given the police, including the same build, height, hairstyle, and complexion. The car appellant was riding in at the time of the robbery was registered to appellant’s grandmother. Officer Duncan saw appellant leave his grandmother’s house in the car approximately one hour after the robbery. Appellant fled from the police and did not stop after he had collided with another vehicle. Flight from the police is a circumstance from which an inference of guilt may be drawn. *See Foster v. State*, 779 S.W.2d 845, 859 (Tex. Crim. App. 1989) (“Evidence of flight is admissible as a circumstance from which an inference of guilt may be drawn. . . . Flight is no less relevant if it is only flight from custody or to avoid arrest.”). Appellant only stopped after the car became lodged between the house and a fence. Officer Gray and Rocket found Long’s purse and the gun that Long identified as the one used in the robbery under the house. The cap that Long grabbed from appellant’s head contained his DNA. Circumstantial evidence alone can be sufficient to establish guilt. *Hooper v. State*, 214 S.W.3d 9, 13 (Tex. Crim. App. 2007). We conclude the circumstantial evidence presented here is legally sufficient to support appellant’s conviction for aggravated robbery and, accordingly, overrule appellant’s first and second issues.

Having overruled both issues, we affirm the trial court's judgment.

/s/ Leslie B. Yates  
Justice

Panel consists of Chief Justice Hedges and Justices Yates and Price.<sup>1</sup>

Do Not Publish — TEX. R. APP. P. 47.2(b).

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<sup>1</sup> Senior Justice Frank C. Price sitting by assignment.