



Fourth Court of Appeals
San Antonio, Texas

MEMORANDUM OPINION

No. 04-16-00731-CR

Russell Scott **ADAMS**,
Appellant

v.

The **STATE** of Texas,
Appellee

From the 198th Judicial District Court, Kerr County, Texas
Trial Court No. B14-76
Honorable M. Rex Emerson, Judge Presiding

Opinion by: Luz Elena D. Chapa, Justice

Sitting: Karen Angelini, Justice
Marialyn Barnard, Justice
Luz Elena D. Chapa, Justice

Delivered and Filed: August 16, 2017

AFFIRMED

Russell Scott Adams pleaded guilty to indecency with a child younger than seventeen years of age pursuant to a plea bargain agreement. The trial court deferred adjudication and placed Adams on probation. The trial court thereafter revoked his probation and rendered a judgment of conviction. On appeal, Adams argues the trial court abused its discretion by finding he violated conditions of his probation. We affirm the trial court's judgment.

BACKGROUND

In 2009, Adams entered a plea bargain agreement and was placed on probation for a period of ten years. The deferred adjudication probation order contained numerous conditions of probation, one of which required Adams not to commit new offenses against the laws of the State of Texas or any other state.

On June 11, 2016, Adams accompanied Pamela Davidson to the emergency room of the Peterson Regional Medical Center. As Davidson began to leave, the medical staff attempted to stop her. Davidson and Adams then started running through the hallway toward the lobby, with hospital staff following after them. Observing the activity, Kerrville Police Officer Jesse Baldwin joined the chase. As Officer Baldwin closed the distance between himself and Davidson, his right arm tangled with Adams's left arm. Adams then pushed Officer Baldwin with his left arm, knocked him off balance, shifted his body weight in the officer's direction, and caused the officer to fall to the ground. As Adams struggled with Officer Baldwin at the emergency room entry, a second man in plain clothing helped constrain Adams. As Officer Baldwin was attempting to place handcuffs on Adams, Adams pulled his right arm away from the officer, threw an object in Davidson's direction, and yelled to her, "Baby, take that phone and run. Take that phone and go." A security camera positioned in the hospital lobby and a dashboard camera from a patrol car recorded the incident.

Based on this incident, the State filed a motion to revoke Adams's probation and proceed with the adjudication of his guilt, alleging—among other grounds for revocation—that Adams committed a new offense of resisting arrest.¹ The trial court heard the State's motion to proceed, and Adams pled the State's allegations were not true. The trial court found the allegations true

¹ The State also alleged Adams committed other offenses.

that Adams violated conditions of his probation and revoked it. After the trial court signed a judgment of conviction on the underlying offense of indecency with a child, Adams timely filed this appeal.

STANDARD OF REVIEW

We review a trial court's order revoking probation for an abuse of discretion. *Rickels v. State*, 202 S.W.3d 759, 763 (Tex. Crim. App. 2006). The burden of proof for revocation of probation requires the State to prove the defendant violated a condition of probation by a preponderance of the evidence. *Id.* When multiple grounds support a trial court's ruling, we may affirm a trial court's order to revoke probation if it is correct on any grounds. *See Sanchez v. State*, 603 S.W.2d 869, 871 (Tex. Crim. App. [Panel Op.] 1980).

DISCUSSION

Section 38.03(a) of the Texas Penal Code provides: "A person commits an offense if he intentionally prevents or obstructs a person he knows is a peace officer or a person acting in a peace officer's presence and at his direction from effecting an arrest, search, or transportation of the actor or another by using force against the peace officer or another." TEX. PEN. CODE ANN. § 38.03(a) (West 2016). Thus, to prove its allegation that Adams resisted arrest, the State had the burden to show by a preponderance of the evidence that Adams acted with intent to prevent or obstruct a person he knew was a peace officer from effecting an arrest by using force against a peace officer. *See id.*; *Rickels*, 202 S.W.3d at 763.

Adams argues that as he was pulling his hand away, he did not use force, a required element of resisting arrest under Texas Penal Code section 38.03(a). He contends that "merely pulling his hands away, without more, does not constitute resisting arrest." However, the Court of Criminal Appeals has held that pulling one's arm away from officers satisfies the requirement of force. *See Finley v. State*, 484 S.W.3d 926, 928-29 (Tex. Crim. App. 2016) (concluding that when the

appellant pulled his arm forward and in the opposite direction from the officer's efforts, this constituted the force required by section 38.03). In this case, the evidence shows Adams actively struggled with a police officer on the ground, pulled his hand away to throw an object, and continued to struggle with the officer as he was being handcuffed. Thus, there is evidence showing Adams used force against Officer Baldwin. *See id.*

Adams also argues his encounter with Officer Baldwin was not an "arrest" because the officer lacked a warrant or probable cause to arrest him. However, the offense of resisting arrest does not require that the arrest be lawful. *See* TEX. PEN. CODE ANN. § 38.03(a). The Code specifies: "It is no defense to prosecution under this section that the arrest or search was unlawful." TEX. PEN. CODE ANN. § 38.03(b). Additionally, even if Officer Baldwin lacked probable cause to arrest Davidson or Adams before Adams pushed him, Officer Baldwin gained probable cause to arrest Adams after Adams pushed him and caused him to fall to the ground. *See State v. Mayorga*, 901 S.W.2d 943, 946 (Tex. Crim. App. 1995) (holding that arrest based on objectively reasonable information is lawful, even if information officer relied on turns out to be incorrect).

Finally, Adams testified at the hearing he did not know Officer Baldwin was a police officer. The offense of resisting arrest requires that an individual know that the person attempting to effect an arrest is a peace officer or a person acting in a peace officer's presence and at his direction. *See* TEX. PEN. CODE ANN. § 38.03(a). Adams testified the officer approached him from behind, so he could not see that Officer Baldwin was indeed an officer. Adams further testified as he and Officer Baldwin collided and fell onto the ground, the blindness in his left eye prevented him from knowing Officer Baldwin was a police officer. The hospital video recording shows Adams and Officer Baldwin in close proximity, facing one another after Adams pushed Officer Baldwin and just before they started to struggle on the ground. The trial court was not required to accept Adams's testimony as true and acted within its discretion to conclude from the video that

Adams knew Baldwin was a police officer. *See Kulhanek v. State*, 587 S.W.2d 424, 426 (Tex. Crim. App. [Panel Op.] 1979) (“After considering all the evidence, the court may, in its sound discretion, revoke probation if the State has proved every element of the offense by a preponderance of the evidence”). The evidence admitted at the hearing supports the trial court’s finding that Adams violated the conditions of his probation by committing the new offense of resisting arrest.

CONCLUSION

Having reviewed the record, we hold the trial court did not abuse its discretion by revoking Adams’s probation and adjudicating his guilt. *See Rickels*, 202 S.W.3d at 763-64. Although the trial court found multiple grounds for adjudicating Adams’s guilt, one ground is sufficient to support a trial court’s order revoking probation. *See Sanchez*, 603 S.W.2d at 871. We therefore need not address Adams’s remaining issues challenging the other grounds supporting the trial court’s order to revoke probation. *See id.*

The trial court’s judgment is affirmed.

Luz Elena D. Chapa, Justice

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