



Fourth Court of Appeals
San Antonio, Texas

MEMORANDUM OPINION

No. 04-17-00359-CR

Ernesto Javier **LOPEZ**,
Appellant

v.

The **STATE** of Texas,
Appellee

From the 341st Judicial District Court, Webb County, Texas
Trial Court No. 2016-CRP-000926-D3
Honorable Rebecca Ramirez Palomo, Judge Presiding

Opinion by: Rebeca C. Martinez, Justice

Sitting: Sandee Bryan Marion, Chief Justice
Rebeca C. Martinez, Justice
Luz Elena D. Chapa, Justice

Delivered and Filed: August 8, 2018

AFFIRMED

Ernesto Lopez was convicted of evading detention with a motor vehicle. *See* TEX. PENAL CODE ANN. § 38.04(a), (b)(2)(A) (West 2016). The trial court assessed his punishment at ten years' confinement, but suspended his sentence and placed him on community supervision for a period of ten years. In a single issue, Lopez challenges the sufficiency of the evidence in support of the jury's verdict. We affirm the judgment of the trial court.

BACKGROUND

Juan Leal, a traffic officer with the Laredo Police Department (“Department”), testified for the State. According to Leal, while on a routine patrol in a marked Department vehicle, he was in a left-turn-only lane approaching a red light at an intersection when he observed the vehicle directly in front of him move to the right-turn-only lane without signaling. From the right lane, the vehicle then proceeded into the intersection to turn left onto the highway, both disregarding the red light and the left-turn lane restriction on the right lane. The vehicle was driven by Lopez.

After observing these traffic violations, Leal activated his vehicle’s red and blue overhead lights and sirens to conduct a traffic stop. According to Leal, Lopez then sped through the intersection so fast that Lopez spun out and lost control, nearly colliding with a pedestrian on the side of the road. Leal testified that at this point Lopez was about one block to half a block away from him. Lopez then righted his vehicle and accelerated down the highway, leaving a “big dust cloud” in his wake. All the while, Leal was in pursuit, trying to safely navigate his way through the intersection and maneuvering around other vehicles that had moved to the side to let him pass, but “[could] see the vehicle the whole way” and was only about two blocks away from Lopez as Lopez proceeded south down the highway. With his lights and sirens still activated, Leal accelerated down the highway in pursuit of Lopez. Leal’s dash-cam video was played for the jury and it showed Lopez’s vehicle in front traveling next to another vehicle that was going about the same speed. The video showed the other vehicle slow down and pull to the side of the road, while Lopez’s vehicle maintained its speed and continued traveling down the highway. The video also showed several other vehicles pulling to the side of the road and letting Leal pass. Leal testified that there were multiple safe places for Lopez to pull over, but that Lopez never attempted nor showed any signs of pulling over.

After disregarding another red light, Leal testified that Lopez continued driving south on the highway, but that Lopez then activated his turn signal and turned right. Following the right turn, Lopez did not slow down, but picked up speed. But then, according to the dash-cam video, five seconds after making the right-hand turn Lopez stopped and pulled over to the side of the road. Based on the video, the amount of time that passed between the activation of Leal's lights and sirens to when Lopez pulled over was approximately forty-five seconds.

Antonio Guardiola testified for the defense. Guardiola was not a witness to the event in question, but discussed his opinions based on his observations of the dashcam video, his recreation of the drive therein, and his prior police experience. Guardiola testified that, in his opinion, Lopez did not run the initial red light or display any abnormal, erratic, or evasive actions. Guardiola further testified that Lopez never reached speeds above the speed limit, and that Lopez stopped at the first safe place he was able to. According to Guardiola, for a person to be considered evading arrest, he has to make evasive actions, such as speeding up or away from the officer, and Lopez never did that. Guardiola testified that for the majority of the pursuit, Leal was at a distance too remote for Lopez to have known Leal was attempting to detain or arrest him.

SUFFICIENCY OF THE EVIDENCE

In a legal sufficiency challenge, we view the evidence in the light most favorable to the jury's verdict and determine whether, based on that evidence and any reasonable inferences therefrom, a rational jury could have found the defendant guilty of all the essential elements of the offense beyond a reasonable doubt. *Jackson v. Virginia*, 443 U.S. 307, 319 (1979); *Merritt v. State*, 368 S.W.3d 516, 525 (Tex. Crim. App. 2012). We recognize that "our role is not to become a thirteenth juror. This Court may not re-evaluate the weight and credibility of the record evidence and thereby substitute our judgment for that of the [jury]." *Isassi v. State*, 330 S.W.3d 633, 638 (Tex. Crim. App. 2010) (quoting *Dewberry v. State*, 4 S.W.3d 735, 740 (Tex. Crim. App. 1999)).

“Rather, we defer to the responsibility of the [jury] to fairly resolve conflicts in testimony, to weigh the evidence, and to draw reasonable inferences from basic facts to ultimate facts.” *Isassi*, 330 S.W.3d at 638. “When the record supports conflicting inferences, we presume that the jury resolved the conflicts in favor of the verdict and defer to that determination.” *Merritt*, 368 S.W.3d at 525-26.

A person commits the offense of evading arrest or detention if he intentionally flees from a person he knows is a peace officer attempting lawfully to arrest or detain him. TEX. PENAL CODE ANN. § 38.04(a). Evading arrest or detention is heightened to a third-degree felony offense if the person uses a vehicle to flee. *Id.* at § 38.04(b)(2)(A). Fleeing “is anything less than prompt compliance with an officer’s direction to stop.” *Horne v. State*, 228 S.W.3d 442, 446 (Tex. App.—Texarkana 2007, no pet). Although speed, distance, and duration of the pursuit may be factors in determining whether a defendant intentionally fled, “no particular speed, distance, or duration is required to show the requisite intent.” *Griego v. State*, 345 S.W.3d 742, 751 (Tex. App.—Amarillo 2011, no pet.). “The statute does not require high-speed fleeing, or even effectual fleeing. It requires only an attempt to get away from a known officer of the law.” *Mayfield v. State*, 219 S.W.3d 538, 541 (Tex. App.—Texarkana 2007, no pet.) Thus, “fleeing slowly is still fleeing.” *Id.*

In challenging the legal sufficiency of the evidence, Lopez specifically argues the evidence is insufficient to show that he intentionally fled from a person he knew was a peace officer who was attempting to arrest or detain him. We disagree.

“Proof that an officer in a vehicle is attempting to arrest or detain a person generally consists of the officer displaying authority by the use of overhead/emergency lights and siren.” *Duvall v. State*, 367 S.W.3d 509, 513 (Tex. App.—Texarkana 2012, pet. ref’d). The dashcam video and Leal’s testimony established that Leal had both his overhead lights and sirens activated for forty-five seconds while in pursuit of Lopez. Thus, it was reasonable for the jury to conclude

that Lopez was aware Leal was attempting to detain or arrest him. *See id.*; *Lopez v. State*, 415 S.W.3d 495, 497 (Tex. App.—San Antonio 2013, no pet.) (“From the officers’ testimony that their lights and sirens were activated for 0.6 miles or approximately one and one-half minutes, the jury could reasonably infer that [the defendant] was aware the officers were attempting to detain him . . .”). Although Guardiola testified that Leal was at a distance too remote for Lopez to know Leal was attempting to detain him, the jury, as the sole judge of the witnesses’ credibility, was free to disbelieve him. *See Isassi*, 330 S.W.3d at 638. In addition, the evidence established that other vehicles on the highway responded to Leal’s lights and sirens by pulling to the side of the road, but that Lopez did not. *See Houston v. State*, No. 04-15-00513-CR, 2016 WL 3362055, at *3 (Tex. App.—San Antonio June 15, 2016, no pet.) (mem. op., not designated for publication) (holding a jury could rationally conclude appellant was intentionally fleeing from an officer when the surrounding vehicles responded to the officer’s lights and sirens, but appellant did not). Although Guardiola testified that Lopez was not speeding, driving recklessly, or evasively, fleeing “is anything less than prompt compliance with an officer’s direction to stop,” and “fleeing slowly is still fleeing.” *Mayfield*, 219 S.W.3d at 541.

Viewing the evidence in the light most favorable to the judgment and deferring as we must to the jury’s credibility and evidentiary assessments, the jury could have rationally found that Lopez intentionally fled from Officer Leal, a peace officer who Lopez knew was attempting to lawfully arrest or detain him. We hold the evidence is sufficient to support Lopez’s conviction for evading detention with a motor vehicle.

CONCLUSION

Based on the foregoing, we overrule Lopez's sole issue on appeal and affirm the trial court's judgment.

Rebeca C. Martinez, Justice

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