In The

Court of Appeals

Ninth District of Texas at Beaumont

NO. 09-09-00586-CR

JOSEPH BERNARD COOPER, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the 284th District Court
Montgomery County, Texas
Trial Cause No. 08-07-07092-CR

MEMORANDUM OPINION

Appellant, Joseph Bernard Cooper, appeals a conviction for bail jumping and failure to appear. The jury found Cooper guilty of the charged offense. After hearing enhancement evidence, the trial court sentenced Cooper to twenty-five years imprisonment. We affirm the judgment of the trial court.

BACKGROUND

Cooper was arrested on October 2, 2007. The following day, AAAA Discount Bail Bonds (AAAA) posted an instanter bond[1] and Cooper was released from the Montgomery County jail. The instanter bond listed the 410th District Court and instructed Cooper to "appear before any court or magistrate before whom the cause may hereafter be pending at any time when, and place where, his presence may be required[.]" The case was set for arraignment on December 13, 2007, in the 284th District Court. Jerry Steven Sondag, an employee of AAAA, testified that the arraignment notice was sent to AAAA and to Cooper. At the arraignment hearing, the case was set for trial on May 1, 2008. The scheduling order stated that there would be a 1:30 p.m. docket call on May 1, 2008, and that "[d]efendant shall be present." The scheduling order was signed by Cooper and his attorney.

Sondag testified that AAAA's clients were required to call in every week. Sondag stated that according to AAAA's records, the last contact that AAAA had with Cooper was on March 30, 2008. Sondag explained that the records indicated that an employee of AAAA called Cooper on March 30, 2008. The person who answered identified himself as Cooper, and told the employee that he had a May 1, 2008 court date. The attorney who represented Cooper in the underlying offense also testified at trial. The attorney

[1] An instanter bond refers to a bail bond ordering the released defendant to appear before any court before whom the cause may be pending at any time when and place where the defendant's presence is required, as opposed to an instruction to appear at a particular date or location in the future. *See, e.g., Euziere v. State*, 648 S.W.2d 700, 702 (Tex. Crim. App. 1983).

testified that he was appointed to represent Cooper on December 13, 2007. He explained that when a case is reset either he or another attorney from his office takes the order to the defendant for the defendant to sign. The attorney testified that he had no recollection of Cooper's case, but that he would not have signed Cooper's name to the scheduling order.

The State presented undisputed evidence that Cooper failed to appear on May 1, 2008. Cooper did not present any evidence in his defense. The jury convicted Cooper of the charged offense. On appeal, Cooper argues that there is insufficient evidence to support the jury's verdict.

STANDARD

In *Brooks v. State*, the Court of Criminal Appeals held that "the *Jackson v. Virginia* standard is the only standard that a reviewing court should apply in determining whether the evidence is sufficient to support each element of a criminal offense that the State is required to prove beyond a reasonable doubt." *Brooks v. State*, 323 S.W.3d 893, 912 (Tex. Crim. App. 2010). Therefore, in determining whether there is sufficient evidence to support the jury verdict, we must review all the evidence in the light most favorable to the verdict to determine whether any rational trier of fact could have found the elements of the offense beyond a reasonable doubt. *Jackson v. Virginia*, 443 U.S. 307, 319, 99 S. Ct. 2781, 61 L. Ed. 2d 560 (1979); *Hooper v. State*, 214 S.W.3d 9, 13 (Tex. Crim. App. 2007).

ANALYSIS

A person commits the offense of bail jumping and failure to appear when a person lawfully released from custody "intentionally or knowingly fails to appear in accordance with the terms of his release." Tex. Penal Code Ann. § 38.10(a) (West 2011). It is a defense to prosecution under section 38.10 "that the actor had a reasonable excuse for his failure to appear[.]" *Id*. § 38.10(c). Cooper failed to appear for his trial setting on May 1, 2008. Cooper argues that the State failed to present sufficient evidence to support the jury's determination that Cooper "intentionally or knowingly" committed the offense. Specifically, Cooper complains that there was no evidence to verify the signature on the scheduling order as his signature, and the bonding company presented no evidence that it was able to verify that the person AAAA spoke with on the phone about the pending court date was actually Cooper.

"Generally, an instanter bond gives proper notice and, in the absence of evidence of a reasonable excuse, is sufficient to prove an appellant intentionally and knowingly failed to appear in accordance with the terms of his release." *Bell v. State*, 63 S.W.3d 529, 531 (Tex. App.—Texarkana 2001, pet. ref'd) (citing *Euziere v. State*, 648 S.W.2d 700, 702 (Tex. Crim. App. 1983)). Proof that the defendant was free pursuant to an instanter bond constitutes a prima facie showing that the defendant had notice of the proceeding at which he failed to appear. *Richardson v. State*, 699 S.W.2d 235, 238 (Tex. App.—Austin 1985, pet. ref'd); *see also Bell*, 63 S.W.3d at 531. However, when there is

evidence that the defendant did not have proper notice of the proceeding in question, the State must do more than prove the terms of the bond in order to meet its burden of proving an intentional or knowing failure to appear. *Richardson*, 699 S.W.2d at 238; *see also Bell*, 63 S.W.3d at 531-32. In such cases, the State must offer evidence that the defendant did have actual notice of the proceeding, or that he engaged in a course of conduct designed to prevent him from receiving notice. *Richardson*, 699 S.W.2d at 238; *see also Bell*, 63 S.W.3d at 532.

The State notes that the instanter bond listed the 410th District Court, but the arraignment hearing took place in the 284th District Court. Likewise, the case was set for trial in the 284th District Court. The State argues that because Cooper does not complain on appeal that the instanter bond was defective or assert that his failure to appear was a result of the change in court, the bond is prima facie proof that Cooper received notice. Cooper presented no evidence that he relied on the court listing on the instanter bond. However, even were we to view the court listing as evidence that the defendant did not have proper notice of his trial setting, the State presented evidence that Cooper had actual notice of the proceeding. *See Bell*, 63 S.W.3d at 532 (concluding that the State presented some evidence that defendant had actual notice where State presented evidence that defendant signed an "Appearance and Announcement Form" which stated the date and time of next required court appearance).

The State presented evidence that Cooper appeared for his arraignment in the 284th District Court and signed a scheduling order that stated that his next mandatory appearance before the court was scheduled for May 1, 2008 at 1:30 p.m. Additionally, the State presented evidence that an employee of AAAA spoke with Cooper in March 2008, and Cooper informed AAAA that his next mandatory court appearance was set for May 1, 2008. Cooper presented no evidence in his defense.

"The *Jackson* standard of review gives full play to the jury's responsibility to fairly resolve conflicts in the evidence, to weigh the evidence, and to draw reasonable inferences from the evidence." *Williams v. State*, 301 S.W.3d 675, 684 (Tex. Crim. App. 2009), *cert. denied*, __ U.S. __, 130 S. Ct. 3411, 177 L. Ed. 2d 326 (2010). Viewing the evidence in the light most favorable to the jury's verdict, we conclude that a rational trier of fact could conclude beyond a reasonable doubt that Cooper intentionally or knowingly failed to appear. *See Bell*, 63 S.W.3d at 532-33; *compare Fish v. State*, 734 S.W.2d 741, 743 (Tex. App.—Dallas 1987, pet. ref'd) (holding evidence insufficient to establish intentional or knowing failure to appear where the court name was left blank on the instanter bond and the record contained no other evidence that the defendant had actual notice of the hearing or engaged in conduct designed to prevent him from receiving notice). We overrule Cooper's sole issue on appeal and affirm the judgment of the trial court.

AFFIRMED.

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CHARLES KREGER
Justice

Submitted on May 27, 2011
Opinion Delivered July 13, 2011
Do not publish

Before McKeithen, C.J., Kreger and Horton, JJ.