COURT OF APPEALS
SECOND DISTRICT OF TEXAS
FORT WORTH

NO. 02-16-00193-CR

BRUNO ANTONIO GALVAN-ESCOBEDO — APPELLANT

V.

THE STATE OF TEXAS — STATE

FROM COUNTY CRIMINAL COURT NO. 3 OF DENTON COUNTY
TRIAL COURT NO. CR-2015-06838-C

MEMORANDUM OPINION[1]

In three issues, Appellant Bruno Antonio Galvan-Escobedo appeals his conviction for criminal trespass. *See* Tex. Penal Code Ann. § 30.05(a) (West Supp. 2016). We affirm.

[1]*See* Tex. R. App. P. 47.4.

Background

In the late evening of April 25, 2015, Appellant was standing outside a Corner Store gas station in The Colony. Three women reported to the store clerk, Jeffrey Taggart, that Appellant was standing in a dark area at the corner of the building in front of the women's cars and that he was staring at them in a manner that made them very uncomfortable and afraid to get out of their vehicles. Taggart walked the women back to their cars and then called the police. When Sergeant Mark Hamm and Officer Nick Titlow of The Colony Police Department (TCPD) arrived, Taggart asked them to intervene and tell Appellant to stay off of the store property. Taggart also informed the officers that he wanted to file criminal trespass charges against Appellant.

Taggart and one of the officers then approached Appellant, and Taggart informed Appellant that he was no longer welcome on the property, that he was bothering customers, and that, if he returned to the property, the Corner Store would file criminal trespass charges. Sergeant Hamm wrote a criminal trespass notice and gave a copy of it to Appellant, who signed the notice acknowledging that he had received it.

Approximately two months later, on June 19, 2015, Appellant returned to the Corner Store property. When Taggart arrived at the store that evening, he observed Appellant standing just outside the door on the south side of the building. Taggart then watched as Appellant walked toward the southeast side of the building near the dumpsters. At trial, Taggart described Appellant's behavior

in walking back and forth, and he testified that, when Appellant realized that Taggart was watching him, Appellant walked away toward the east side of the building. After Taggart called the police, he noticed two police officers who were already in the parking lot of the store.

In an unrelated traffic stop, Officer Carey had initially pulled over a vehicle in the lot next to the Corner Store. Officer Titlow, who happened to be passing by in his patrol car, pulled over to assist Officer Carey. When Officer Titlow arrived, he noticed that Appellant was sitting on a brick wall nearby, staring at Officer Carey. Officer Carey motioned toward Appellant with his flashlight and told Officer Titlow that Appellant had walked up behind him from the direction of the Corner Store, which Officer Titlow estimated was 60 feet away.

Officer Titlow then approached Appellant and asked for his name and his driver's license. Appellant provided neither and instead became argumentative. Once he began speaking to Appellant, Officer Titlow recognized Appellant as the individual from the April 25 trespass incident and recalled that he had been specifically warned to stay off of the Corner Store property. However, at that point, Officer Titlow did not place Appellant under arrest or tell him that he could not leave. When Officer Carey finished conducting his traffic stop, he joined Officer Titlow and Appellant. While Officer Carey remained outside with Appellant, Officer Titlow went inside the Corner Store and spoke to Taggart, who confirmed that Appellant was the person who had been previously warned against trespassing.

Appellant was arrested and charged with criminal trespass. A jury found Appellant guilty and sentenced him to 75 days' confinement.

Discussion

I. Trespass notice

In his first issue, Appellant argues that the trial court erred in admitting the criminal trespass notice because the State did not lay a proper predicate.

We review a trial court's decision to admit evidence for abuse of discretion. *Mai v. State*, 189 S.W.3d 316, 320 (Tex. App.—Fort Worth 2006, pet. ref'd). If the court's decision falls outside the "zone of reasonable disagreement," it has abused its discretion. *Id.*

The criminal trespass notice was offered into evidence through witness Karen Frawley, who identified herself as the TCPD records manager. Before offering the exhibit into evidence, the State attempted to lay a predicate for admissibility of this document as a business record under Texas Rule of Evidence 803(6). Tex. R. Evid. 803(6). When Appellant objected that the State had failed to lay a proper predicate,[2] the trial court initially sustained the objection, but after additional testimony was elicited from the witness and the

[2]At trial, Appellant took issue with the fact that Frawley was not personally present when the record was created, but this is not required by rule 803(6). *See* Tex. R. Evid. 803(6); *see also Montoya v. State*, 832 S.W.2d 138, 141 (Tex. App.—Fort Worth 1992, no pet.) ("[R]ule 803(6) does not require the witness laying the predicate for the introduction of the records to be the creator of the records or even an employee of the same company.").

document was reoffered, the trial court overruled Appellant's objection, admitted the document into evidence, and permitted it to be published to the jury.

We need not address whether the State laid a proper predicate under the business records exception because the criminal trespass notice, as offered by the State, did not constitute hearsay evidence. Texas Rule of Evidence 802 provides that hearsay is generally inadmissible, but for a document or statement to be barred as hearsay, it must be offered to prove the truth of the matter asserted therein. Tex. Rule Evid. 801(d)(2); *but see* Tex. R. Evid. 802, 803, 804 (characterizing certain out-of-court statements as nonhearsay and providing exceptions to the hearsay rule). Here, the issuance of the criminal trespass notice was evidence of an operative fact. As such, its relevance hinged not upon the truth of the facts contained therein but upon the fact that the notice itself was issued—that Appellant received notice in compliance with the criminal trespass statute. *See* Tex. Penal Code Ann. § 30.05(a)(1), (b)(2). When a fact in controversy is whether a communication was made and not its truth or falsity, the writing, words, or other communications evidencing that fact is original evidence and not hearsay. *Norton v. State*, 564 S.W.2d 714, 717 (Tex. Crim. App. [Panel Op.] 1978) (holding evidence of telephone conversations between appellant and police in prosecution for making a false report were not hearsay because they were evidence of operative facts of whether communications were made and not their truth or falsity). The trial court did not abuse its discretion in admitting into evidence the criminal trespass notice.

Even assuming the evidence was hearsay improperly admitted as a business record, Officer Titlow testified without objection that he was present when the criminal trespass notice was issued to Appellant. A trial court's erroneous admission of evidence will not require reversal when other such evidence was received without objection, either before or after the complained-of ruling. *Estrada v. State*, 313 S.W.3d 274, 302 n.29 (Tex. Crim. App. 2010) (citing *Leday v. State*, 983 S.W.2d 713, 718 (Tex. Crim. App. 1998)), *cert. denied*, 562 U.S. 1142 (2011); *see also Mitchell v. State*, 750 S.W.2d 378, 380 (Tex. App.—Fort Worth 1988, pet. ref'd) ("Even assuming that appellant's argument is correct, any error in the admission of the records is harmless because the records relate to facts which were sufficiently proved by other competent and unobjected-to evidence.").

For the above reasons, we overrule Appellant's first issue.

II. Directed verdict

In his second issue, Appellant argues that the trial court erred in denying his motion for a directed verdict because there was no evidence regarding the owner of the property.

The standard of review applicable to a motion for directed verdict is the same used under a sufficiency review. *McDuff v. State*, 939 S.W.2d 607, 613 (Tex. Crim. App.), 522 U.S. 844 (1997). In our due-process review of the sufficiency of the evidence to support a conviction, we view all of the evidence in the light most favorable to the verdict to determine whether any rational trier of

fact could have found the essential elements of the crime beyond a reasonable doubt. *Jackson v. Virginia*, 443 U.S. 307, 319, 99 S. Ct. 2781, 2789 (1979); *Jenkins v. State*, 493 S.W.3d 583, 599 (Tex. Crim. App. 2016).

The trier of fact is the sole judge of the weight and credibility of the evidence. *See* Tex. Code Crim. Proc. Ann. art. 38.04 (West 1979); *Blea v. State*, 483 S.W.3d 29, 33 (Tex. Crim. App. 2016). Thus, when performing an evidentiary sufficiency review, we may not re-evaluate the weight and credibility of the evidence and substitute our judgment for that of the factfinder. *See Montgomery v. State*, 369 S.W.3d 188, 192 (Tex. Crim. App. 2012). Instead, we determine whether the necessary inferences are reasonable based upon the cumulative force of the evidence when viewed in the light most favorable to the verdict. *Murray v. State*, 457 S.W.3d 446, 448 (Tex. Crim. App.), *cert. denied*, 136 S. Ct. 198 (2015). We must presume that the factfinder resolved any conflicting inferences in favor of the verdict and defer to that resolution. *Id.* at 448–49; *see Blea*, 483 S.W.3d at 33.

An individual commits criminal trespass when he enters or remains on the property of another without effective consent and the individual had notice that the entry was forbidden. Tex. Penal Code Ann. § 30.05. "Effective consent" includes consent by a person legally authorized to act for the owner. *Id.* § 1.07(a)(19) (West Supp. 2016). "Owner" includes a person who has "a greater right to possession of the property than the actor." *Id.* § 1.07(a)(35)(A); *see Arnold v. State*, 867 S.W.2d 378, 379 (Tex. Crim. App. 1993). "Possession" is

defined as "actual care, custody, control, or management." Tex. Penal Code Ann. § 1.07(a)(39).

An allegation of ownership may be alleged in either an actual owner or a "special owner." *See Jackson v. State*, 270 S.W.3d 649, 657 (Tex. App.—Fort Worth 2008, pet. ref'd). A "special owner" is an individual who is in custody or control of property belonging to another person or a corporation. *Id.*; *Lewis v. State*, 193 S.W.3d 137, 140 (Tex. App.—Houston [1st Dist.] 2006, no pet.). When a corporation is the owner of property, it is sufficient to allege special ownership in a natural person acting for the corporation. *Simpson v. State*, 648 S.W.2d 1, 2 (Tex. Crim. App. [Panel Op.] 1983) (noting that "it is the preferable pleading practice to allege 'special' ownership in a natural person acting for the corporation"); *see also Jackson*, 270 S.W.3d at 657.

Taggart testified that on both of the relevant dates—April 25 and June 19—he was employed as a customer service representative for the Corner Store. He further testified that CST, Incorporated owned the Corner Store and that he worked under the authority of CST as directed by his store manager. According to Taggart, the store manager was also aware of the incidents that had taken place with Appellant, and he had given Taggart, along with other Corner Store employees, permission to make decisions regarding whether to summon the police and make criminal trespass complaints.

Taggart's testimony was sufficient to establish that he was a special owner with authority to withhold consent to Appellant's presence on the property. *See,*

e.g., *Martinez v. State*, No. 02-14-00423-CR, 2015 WL 1967442, at *2 (Tex. App.—Fort Worth Apr. 30, 2015, no pet.) (mem. op., not designated for publication) (holding "security asset protection person" at Wal-Mart established herself as a special owner of property and thereby established greater right to possession); *State v. Jackson*, 849 S.W.2d 444, 446 (Tex. App.—San Antonio 1993, no pet.) (rejecting argument that owners of property cannot delegate authority to agents to keep people off private property and applying "special owner" doctrine to trespass action). We therefore overrule Appellant's second issue.

III. Motion to suppress

In his third issue, Appellant argues that the trial court erred in refusing to suppress any evidence derived from what he claims was an illegal extended detention by Officer Titlow prior to his arrest on June 19.

We review a trial court's ruling on a motion to suppress evidence under a bifurcated standard of review. *Amador v. State*, 221 S.W.3d 666, 673 (Tex. Crim. App. 2007); *Guzman v. State*, 955 S.W.2d 85, 89 (Tex. Crim. App. 1997). We give almost total deference to a trial court's rulings on questions of historical fact and application-of-law-to-fact questions that turn on an evaluation of credibility and demeanor, but we review de novo application-of-law-to-fact questions that do not turn on credibility and demeanor. *Amador*, 221 S.W.3d at 673; *Estrada v. State*, 154 S.W.3d 604, 607 (Tex. Crim. App. 2005); *Johnson v. State*, 68 S.W.3d 644, 652–53 (Tex. Crim. App. 2002).

When, as here, the record is silent as to the reasons for the trial court's ruling, or when there are no explicit fact findings and neither party timely requested findings and conclusions from the trial court, we imply the necessary fact findings that would support the trial court's ruling if the evidence, viewed in the light most favorable to the trial court's ruling, supports those findings. *State v. Garcia-Cantu*, 253 S.W.3d 236, 241 (Tex. Crim. App. 2008); *see Wiede v. State*, 214 S.W.3d 17, 25 (Tex. Crim. App. 2007). We then review the trial court's legal ruling de novo unless the implied fact findings supported by the record are also dispositive of the legal ruling. *State v. Kelly*, 204 S.W.3d 808, 819 (Tex. Crim. App. 2006).

Appellant argues that Officer Titlow illegally detained him without a sufficient basis to do so. We disagree. First, the record shows that their interaction on June 19 began as a voluntary encounter. *See State v. Woodard*, 314 S.W.3d 86, 93–95 (Tex. App.—Fort Worth 2010) ("Law enforcement officers are permitted to approach individuals without probable cause or reasonable suspicion to ask questions or even to request a search."), *aff'd*, 341 S.W.3d 404 (Tex. Crim. App. 2011). At the outset, Officer Titlow did not tell Appellant that he could not leave or that he was under arrest, and nothing in the record indicates that Appellant could not have terminated the interaction or declined to speak to Officer Titlow. *See id.* (noting there was no evidence in the record of Appellant's subjective perception that he did not feel free to leave or of any threatening presence by the officers).

During this voluntary encounter, Officer Titlow developed reasonable suspicion to justify an investigatory detention. *See Stewart v. State*, 603 S.W.2d 861, 862 (Tex. Crim. App. 1980) (holding a consensual encounter initially occurred when officers approached a parked van and shined their spotlights into the van, but it became a reasonable and valid investigatory detention when the driver exited the vehicle and the officers smelled marijuana). Reasonable suspicion exists when, based on the totality of the circumstances, the officer has specific, articulable facts that when combined with rational inferences from those facts, would lead him to reasonably conclude that a particular person is, has been, or soon will be engaged in criminal activity. *Ford v. State*, 158 S.W.3d 488, 492 (Tex. Crim. App. 2005). This is an objective standard that disregards any subjective intent of the officer and looks solely to whether an objective basis for his belief exists. *Id.* An officer conducts a lawful temporary detention when he or she has reasonable suspicion to believe that an individual is violating the law. *Crain v. State*, 315 S.W.3d 43, 52 (Tex. Crim. App. 2010); *Ford*, 158 S.W.3d at 492.

Before Officer Titlow even approached Appellant, Officer Carey had informed him that Appellant had approached Officer Carey from the direction of the Corner Store, located approximately 60 feet away. When Officer Titlow began speaking to Appellant, Officer Titlow recognized him as the person who had been warned about trespassing on the Corner Store property on April 25. Based on these facts, Officer Titlow began to develop a reasonable suspicion

that Appellant had trespassed on the Corner Store property; he confirmed this suspicion when he went inside the Corner Store and spoke to Taggart. The trial court therefore did not err in refusing to suppress evidence discovered as a result of Officer Titlow's detention of Appellant. We overrule Appellant's third issue.

Conclusion

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

/s/ Bonnie Sudderth
BONNIE SUDDERTH
JUSTICE

PANEL: WALKER, MEIER, and SUDDERTH, JJ.

DO NOT PUBLISH
Tex. R. App. P. 47.2(b)

DELIVERED: February 23, 2017