# In The
# Court of Appeals
# Seventh District of Texas at Amarillo

No. 07-16-00449-CR

CHRISTOPHER CAREY, APPELLANT

V.

THE STATE OF TEXAS, APPELLEE

On Appeal from the 251st District Court
Potter County, Texas
Trial Court No. 71,837-C, Honorable Richard Dambold, Presiding

February 20, 2019

## MEMORANDUM OPINION

Before QUINN, C.J., and CAMPBELL and PARKER, JJ.

A jury found appellant, Christopher Carey, guilty of evading arrest or detention[1] enhanced to a state jail felony due to appellant's prior conviction of an evading arrest or detention offense.[2] The trial court set appellant's punishment at five years' confinement

[1] *See* TEX. PENAL CODE ANN. § 38.04(a) (West 2016).

[2] *See id.* § 38.04(b)(1).

in the Texas Department of Criminal Justice, Institutional Division. Appellant timely filed his appeal. We affirm.

## Background

In response to a 911 call around 3:00 a.m. on September 5, 2015, an Amarillo Police Department officer was dispatched to the 1500 block of North Polk Street. The 911 caller, a nearby resident, stated that she had observed someone trying to open the doors of cars parked in the area. She described the individual as a black male wearing basketball shorts and no shirt. The officer began checking the area for a subject matching that description, and saw someone who did: appellant, who was walking northbound in the 1500 block of North Polk.

The officer stopped his patrol car and got out. The officer was in an unmarked patrol unit but was dressed in full uniform with police insignia. He called appellant to him and appellant approached. When the officer asked appellant where he was going, appellant replied that he was going to his aunt's house. The officer then explained the reason he had stopped appellant. He asked for appellant's consent to search him, which appellant granted. The officer had appellant turn around and place his hands behind his back. When the officer made contact with appellant's hand, appellant began to run. Although the officer told him to stop, appellant continued running. He was eventually apprehended by another officer who was in the area.

Shortly after appellant was arrested, the officers met with the 911 caller, who confirmed that appellant was the same individual she had observed earlier. She also reported that she had seen appellant inside her neighbor's car.

Appellant was convicted of evading arrest or detention. In his sole issue on appeal, appellant contends that the evidence is legally insufficient to support his conviction because he was not being lawfully detained at the time he ran away from the officer.

## Standard of Review

In assessing the sufficiency of the evidence, we review all 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 offense beyond a reasonable doubt. *Jackson v. Virginia*, 443 U.S. 307, 319, 99 S. Ct. 2781, 61 L. Ed. 2d 560 (1979); *Brooks v. State*, 323 S.W.3d 893, 912 (Tex. Crim. App. 2010). "[O]nly that evidence which is sufficient in character, weight, and amount to justify a factfinder in concluding that every element of the offense has been proven beyond a reasonable doubt is adequate to support a conviction." *Brooks*, 323 S.W.3d at 917 (Cochran, J., concurring). When reviewing all of the evidence under the *Jackson* standard of review, the ultimate question is whether the jury's finding of guilt was a rational finding. *See id.* at 906-07 n.26 (discussing Judge Cochran's dissenting opinion in *Watson v. State*, 204 S.W.3d 404, 448-50 (Tex. Crim. App. 2006), as outlining the proper application of a single evidentiary standard of review). "[T]he reviewing court is required to defer to the jury's credibility and weight determinations because the jury is the sole judge of the witnesses' credibility and the weight to be given their testimony." *Id.* at 899.

## Analysis

A person commits the felony offense of evading arrest if he intentionally flees from a person he knows is a peace officer lawfully attempting to arrest or detain him. TEX.

PENAL CODE ANN. § 38.04(a). The lawfulness of the attempted detention is an element of the offense that must be proved by the State. *Guillory v. State*, 99 S.W.3d 735, 741 (Tex. App.—Houston [1st Dist.] 2003, pet. ref'd). A detention for the purpose of investigating possible criminal behavior is lawful when the law enforcement officer can point to specific and articulable facts that, taken together with rational inferences from those facts, would lead him reasonably to suspect that the person detained is, has been, or soon will be engaged in criminal activity. *York v. State*, 342 S.W.3d 528, 536 (Tex. Crim. App. 2011).

The testimony adduced at trial indicated that an Amarillo Police Department dispatcher received a call from a self-identified woman about unusual behavior she observed. Specifically, she saw a man trying to "break into" cars and she provided a description of the man: "He was black. He had – he was tall. Skinny. He had some basketball shorts on. He didn't have a shirt." The police officer dispatched to the area quickly encountered a man meeting the description provided by the informant.

According to the officer, his detention of appellant occurred at the time he explained his reason for stopping him, because he wanted to determine whether appellant was the subject of the call. Appellant contends, however, that the encounter was consensual and that the officer had no specific, articulable facts upon which he could base a detention.

Police and citizens may engage in three distinct types of interactions: consensual encounters, investigative detentions, and arrests. *State v. Woodard*, 341 S.W.3d 404, 410-11 (Tex. Crim. App. 2011). An encounter occurs when an officer approaches a citizen in a public place to ask questions, and the citizen is willing to listen and answer.

*Crain v. State*, 315 S.W.3d 43, 49 (Tex. Crim. App. 2010). An investigative detention, on the other hand, takes place when a person yields to the officer's authority under a reasonable belief that he is not free to leave. *Id.* Appellant argues that his interaction with the officer remained a consensual encounter, rather than an investigatory detention. The relevant inquiry is whether a reasonable person in the citizen's position would have felt free to decline the officer's requests or otherwise terminate the encounter. *Id.*

The officer testified that he got out of his patrol car quickly to stop appellant and question him. He further testified that, after appellant consented to be searched, "I had him turn around and place his hands behind his back, so I could have control of him while I conducted a search. As soon as I made contact with his hand is when he took off running." By turning around and placing his hands behind his back, appellant yielded to the officer's show of authority under circumstances in which a reasonable person would believe that he was not free to leave. As a result, we conclude that the officer had initiated an investigative detention.

To initiate an investigative detention, a police officer must have reasonable suspicion of criminal activity. *See Matthews v. State*, 431 S.W.3d 596, 602-03 (Tex. Crim. App. 2014). That is, the officer must reasonably suspect that: (1) some activity out of the ordinary is occurring or has occurred; (2) the detained person is connected with the unusual activity; and (3) the activity is related to a crime. *Zayas v. State*, 972 S.W.2d 779, 788 (Tex. App.—Corpus Christi 1998, pet. ref'd). No bright-line rule governs when a consensual encounter becomes a detention. *Woodard*, 341 S.W.3d at 411.

The officer's stop was based on information provided by a citizen who called 911. An ordinary citizen who witnesses a crime and reports her observation to police as a matter of civic duty may be referred to as a citizen-informer, and is presumed to speak with the voice of honesty and accuracy.[3] *State v. Duarte*, 389 S.W.3d 349, 356 (Tex. Crim. App. 2012) (citing 2 Wayne R. Lafave, *Search and Seizure: A Treatise on the Fourth Amendment* § 3.3 (4th ed. 2004)); *see also Navarette v. California*, 572 U.S. 393, 399, 134 S. Ct. 1683, 188 L. Ed. 2d 680 (2014) (stating eyewitness knowledge lends support to tip's reliability; informant's "explicit and detailed description of alleged wrongdoing, along with a statement that the event was observed firsthand, entitles his tip to greater weight than might otherwise be the case" (quoting *Illinois v. Gates*, 462 U.S. 213, 234, 103 S. Ct. 2317, 76 L. Ed. 2d 527 (1983)). Here, the citizen-informant also identified herself, thereby putting herself in a position to be held accountable. *See Pipkin v. State*, 114 S.W.3d 649, 655 (Tex. App.—Fort Worth 2003, no pet.) (caller can support her reliability by putting herself in a position to be accountable).

However, even a presumptively reliable report from a citizen-informer requires some corroboration by the detaining officer. Corroboration does not require that the officer personally observe the conduct giving rise to a reasonable suspicion that a crime is being, has been, or is about to be committed. *Brother v. State*, 166 S.W.3d 255, 259 n.5 (Tex. Crim. App. 2005) (citing *Adams v. Williams*, 407 U.S. 143, 147, 92 S. Ct. 1921,

[3] Appellant also seems to argue that a detention was unjustified because, although the 911 dispatcher may have received specific facts from the citizen caller indicating suspicious activity, the patrol officer did not. For example, appellant complains that, "[A]t the time of the initial encounter, [the patrol officer] had not received information from the [911 caller] that Appellant was trying to get into vehicles that he did not own or commit other criminal acts." A detaining officer need not be personally aware of each fact supporting a reasonable suspicion to detain; rather, the cumulative information known to cooperating officers, such as a 911 police dispatcher, at the time of the stop is to be considered in determining whether reasonable suspicion exists. *Derichsweiler v. State*, 348 S.W.3d 906, 914 (Tex. Crim. App. 2011).

32 L. Ed. 2d 612 (1972); *Pipkin*, 114 S.W.3d at 654). "Rather, corroboration refers to whether the police officer, in light of the circumstances, confirms enough facts to reasonably conclude that the information given to him is reliable and a temporary detention is thus justified." *Id.* (citing *Alabama v. White*, 496 U.S. 325, 330-31, 110 S. Ct. 2412, 110 L. Ed. 2d 301 (1990); *Pipkin*, 114 S.W.3d at 654).

In this case, an identified caller had reported her firsthand observations of specific unlawful conduct. *See Roy v. State*, 90 S.W.3d 720, 723 (Tex. Crim. App. 2002) (information from an informant that exhibits sufficient indicia of reliability may provide reasonable suspicion needed to justify investigatory detention). Appellant was near the location where the suspicious activity had been reported. His appearance matched the description provided by the caller. We conclude that the totality of these circumstances gave rise to a reasonable suspicion.

After examining all of the evidence in the light most favorable to the verdict, we conclude that a rational juror could have found that the officer was lawfully attempting to detain appellant based on reasonable suspicion.

## Conclusion

The evidence is sufficient to establish that appellant committed the offense of evading detention. For the reasons stated, we affirm the judgment of the trial court.

Judy C. Parker
Justice

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