



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

No. 07-21-00281-CR

JOSE LUIS TORRES, APPELLANT

V.

THE STATE OF TEXAS, APPELLEE

On Appeal from the 287th District Court
Parmer County, Texas
Trial Court No. 3736, Honorable Gordon H. Green, Presiding

December 13, 2022

MEMORANDUM OPINION

Before **PARKER** and **DOSS** and **YARBROUGH, JJ.**

A jury convicted Appellant, Jose Luis Torres, of evading arrest or detention with vehicle. See TEX. PENAL CODE ANN. § 38.04. Appellant pleaded “true” to an enhancement allegation for a prior felony offense and the court assessed his punishment at confinement for six years in the Texas Department of Criminal Justice. Appellant filed this appeal, raising a challenge to the jury charge. We affirm.

BACKGROUND

Friena Chief of Police Isidro Jimenez was patrolling the streets of Friena when he observed a red Mustang traveling at a high rate of speed. After he clocked the vehicle traveling at 61 miles per hour in a 45-mile-per-hour zone, Jimenez activated his emergency lights and followed the vehicle to make a traffic stop. The Mustang sped up and drove away. Jimenez then pursued the vehicle for approximately 40 seconds, until the car pulled into the driveway of a home owned by Appellant's father. Appellant exited the vehicle, took a few steps toward the front of the house, then raised his hands in surrender. Two passengers also exited the vehicle. Appellant was arrested and later charged by indictment with the offense of evading arrest or detention.

At trial, Appellant argued that he did not attempt to escape from Jimenez, but that he intended to drive the vehicle to his father's house so that it would not be impounded when he was arrested. At the charge conference, Appellant's counsel objected to the inclusion of the term "evading arrest," asserting that, although the word "evading" is used in the title of the applicable statute, it does not appear in the statute itself. He contended that, because the statute uses the phrase "intentionally flees," the charge should not use the word "evading." The trial court overruled Appellant's objection.

STANDARD OF REVIEW

An appellate court reviews an alleged jury charge error in a two-step process. *Kirsch v. State*, 357 S.W.3d 645, 649 (Tex. Crim. App. 2012). First, we determine whether the challenged instruction is erroneous. *Id.* If the charge is erroneous, we then analyze the error for harm. *Id.*

ANALYSIS

In Appellant's sole issue, he contends that the jury charge was error, in that it instructed the jury that "evading" arrest or detention is identical conduct to that of "fleeing from a peace officer." Appellant asserts that the statute criminalizes only the action of "fleeing" arrest and does not make the action of "evading" arrest or detention an offense. We disagree with Appellant's assessment.

The definitional portion of the charge submitted to the jury reads: "A person commits the offense of evading arrest or detention if he intentionally flees from a person he knows is a peace officer attempting to lawfully arrest or detain him." This language is derived directly from section 38.04 of the Penal Code, which is titled "Evading Arrest or Detention." See TEX. PENAL CODE ANN. § 38.04(a) ("A person commits an offense if he intentionally flees from a person he knows is a peace officer or federal special investigator attempting lawfully to arrest or detain him.").

At the charge conference, Appellant's counsel objected to the inclusion of the term "evading arrest" in the next portion of the charge, which instructed the jury: "if you believe from the evidence beyond a reasonable doubt, that the defendant . . . did then and there, while using a vehicle, intentionally flee from Chief Isidro Jimenez . . . you will find the defendant guilty of the offense of evading arrest or detention" Appellant argued:

I object to the use of the term "evading arrest," although the word "evading" is used in the title of the statute, Section 38.04 of the [P]enal [C]ode, the actual offense is contained in Section 38.04(a) and it is defined as "intentionally flees." The word "evading" does not appear in the portion of the statute which says this conduct is an offense. I believe that by use of the word "evading" as opposed to the term "fleeing," that constitutes a comment on the weight of the evidence or it constitutes a change in the

proof, level of proof and action and intent required in order to be an offense under this section. So for that reason, I propose that the word “evading” in that sentence be modified to state “fleeing”

In his brief on appeal, Appellant contends that “the court’s charge described the act of ‘intentionally fleeing’ as ‘evading.’” However, the charge did not define either “fleeing” or “evading.” The charge tracked the applicable statutory language, accurately setting out the law on the offense charged. “A jury charge which tracks the language of a particular statute is a proper charge on the statutory issue.” *Riddle v. State*, 888 S.W.2d 1, 8 (Tex. Crim. App. 1994) (en banc). Here, the charge accurately reflects that section 38.04 is violated if an individual “intentionally flees” under certain circumstances and the jury was asked to determine whether Appellant did “intentionally flee” from Jimenez under such circumstances.

The jury was further properly instructed that if Appellant engaged in the conduct described in section 38.04, the jury was to find him “guilty of the offense of evading arrest or detention.” The charge used verbatim the statutory title from the Texas Penal Code. The charge included the word “evading” only when referencing the title of the offense. The trial court did not err by referencing the correct title of the offense, because it also limited the jury by instructing that it could only find Appellant guilty if he did “intentionally flee.” See *Foster v. State*, No. 14-11-00653-CR, 2013 Tex. App. LEXIS 1139, at *18–19 (Tex. App.—Houston [14th Dist.] Feb. 7, 2013, no pet.) (mem. op., not designated for publication) (concluding that appellant established neither charge error nor egregious harm by trial court’s inclusion of title of offense of evading arrest or detention in jury charge when court correctly instructed jury on elements it must find for conviction).

Appellant has not established that the jury charge was erroneous. We overrule Appellant's issue.

CONCLUSION

Having overruled Appellant's sole issue on appeal, we affirm the judgment of the trial court.

Judy C. Parker
Justice

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