In the
Court of Appeals
Sixth Appellate District of Texas at Texarkana

No. 06-23-00189-CR

WILLIAM CODY DUNCAN, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the 115th District Court
Marion County, Texas
Trial Court No. F15608

Before Stevens, C.J., van Cleef and Rambin, JJ.
Memorandum Opinion by Justice Rambin

MEMORANDUM OPINION

A Marion County jury convicted William Cody Duncan of bail jumping and failure to appear. *See* TEX. PENAL CODE ANN. § 38.10(f). After Duncan pled true to the State's punishment enhancement allegation, the jury assessed a sentence of fifteen years' imprisonment. In his sole point of error on appeal, Duncan argues that the trial court erred by failing to submit his requested jury unanimity instruction.

We find no error in the trial court's decision to deny Duncan's requested jury unanimity instruction. To the extent he complains of jury-charge error, we find the complaint meritless since the trial court's charge instructed the jury that unanimity was required. As a result, we affirm the trial court's judgment.

I. Standard of Review

"We employ a two-step process in our review of alleged jury-charge error." *Murrieta v. State*, 578 S.W.3d 552, 554 (Tex. App.—Texarkana 2019, no pet.) (citing *Abdnor v. State*, 871 S.W.2d 726, 731 (Tex. Crim. App. 1994)). "Initially, we determine whether error occurred and then evaluate whether sufficient harm resulted from the error to require reversal." *Id.* (quoting *Wilson v. State*, 391 S.W.3d 131, 138 (Tex. App.—Texarkana 2012, no pet.) (citing *Abdnor*, 871 S.W.2d at 731–32)).

II. Denial of Duncan's Requested Jury Charge Was Proper

Duncan's sole point of error complains that the trial court erred by denying a special instruction on jury unanimity. Because the record demonstrates that Duncan's requested instruction was improper, we find no error in the trial court's decision to deny it.

The State's indictment alleged that, on or about June 5, 2023, Duncan, "after being lawfully released from custody on a pending felony charge on condition that he subsequently appear in court, intentionally or knowingly fail[ed] [t]o appear in accordance with the terms of his release." At trial, the State introduced evidence that Duncan had two pending felony charges in Marion County. The State also proved that Marion County District Clerk Susan Anderson sent notices to Duncan informing him that he was required to appear at 9:00 a.m. on June 5, 2023, in the Marion County district courtroom for a docket call on both felony charges, but he failed to appear.

During the charge conference, even though Duncan was required to appear at the same time for both felony offenses, his attorney said, "The only thing -- I haven't seen the jury charge yet, but I think because you presented two deals, I think we're going to need a unanimity deal that they can't -- six of them find him for one and six of them find him for the other."[1] Now, he argues that the trial court erred by denying his requested instruction.

In this case, the State's indictment did not require the jury to select between the two felony offenses for which Duncan failed to appear. This is because the act of failing to appear for both offenses occurred at the same time. Further, the sole act of failure to appear was the

[1]On appeal, Duncan argues,

> In this case the Jury was presented with States [sic] Exhibit 5 and States [sic] Exhibit 11 that demonstrated that the Appellant failed to appear in felony cause numbers F15437 and F15526 respectively. It is completely plausible that one or more jurors voted guilty thinking that the appellant failed to appear at court for cause number F15437 and the rest of them believed that he failed to appear at court for F15526.

subject of a unitary defensive theory of reasonable excuse.[2] Crucially, Duncan's pending felony charges were admitted without objection, along with the conditions of release for those charges and the notices of hearing for those charges. No contrary evidence was admitted. On appeal, Duncan contends that "[i]t is completely plausible" that some jurors believed that Duncan failed to appear on one charge, but not the other, while other jurors believed the converse. Duncan, though, does not explain how *this* jury could diverge in that manner given the evidence in *this* case. Thus, what Duncan contends is "plausible" is, in reality, a hypothetical that has no basis in the evidence.

As a result, the jury was properly presented with one question—whether Duncan failed to appear on June 5 at 9:00 a.m. Accordingly, the trial court properly denied Duncan's request.

III. The Jury Charge Required Unanimity

To the extent Duncan's brief can be read to raise a claim that there was no unanimity instruction, we find the complaint meritless. The trial court's jury charge notified the jury that a unanimous verdict was required by employing the following language:

> you should elect one of your members as your Presiding Juror. It is his or her duty to preside at your deliberations, vote with you, and when you have unanimously agreed upon a verdict, to certify to your verdict by using the appropriate form . . . .
>
> . . . .
>
> . . . . After you have reached a unanimous verdict, the Presiding Juror will certify thereto by filling in the appropriate form attached to this charge and signing his or her name as Presiding Juror.

[2]Duncan's father testified that Duncan "thought" he did not need to appear on June 5. Duncan's father did not testify that the excuse applied to one felony charge but not the other. Duncan's father conceded that Duncan was aware of the June 5 setting but chose not to appear.

Moreover, the State's closing argument emphasized the importance of jury unanimity when it stated that the court's charge "tells you that when you go back and you deliberate that you have to make a unanimous decision. So all 12 of you have to agree as to the guilt or whether or not someone is guilty or not guilty." Also, after reading the verdict of guilt, the trial court asked the foreperson if it was "the unanimous verdict of the jury," and the foreperson responded, "Yes, sir."

Having found no jury-charge error, we overrule Duncan's sole point of error on appeal.

IV. Disposition

We affirm the trial court's judgment.

Jeff Rambin
Justice

Date Submitted: February 22, 2024
Date Decided: March 11, 2024

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