IN THE
TENTH COURT OF APPEALS

No. 10-14-00137-CV

2008 CHEVROLET CORVETTE, VIN#1G1YY36W585105455,
Appellant

v.

THE STATE OF TEXAS,
Appellee

From the 66th District Court
Hill County, Texas
Trial Court No. 51,223

MEMORANDUM OPINION

James Tyrone Riggs was arrested for evading arrest in a vehicle, a 2008 Chevrolet Corvette. Soon after Riggs's arrest, the State filed a "Notice of Seizure and Petition to Forfeit" the Corvette. Riggs timely filed an answer and appeared at the hearing on the State's petition. After the hearing, which spanned two days, the trial court ordered the forfeiture of the Corvette to the State. Riggs did not testify at the hearing, although he participated in cross-examination of the State's witnesses and called his own witness. Because we find no error related to the issues raised by Riggs, the trial court's judgment

is affirmed.

THE OFFENSE

Riggs was driving his convertible Corvette with the top down during the late evening of October 12, 2013. Officer David Haakinson, of the Hillsboro Police Department, saw and recognized Riggs, and asked dispatch to check Riggs for outstanding warrants. When dispatch advised Haakinson that Riggs had an outstanding warrant and that Riggs's driver's license was suspended, Haakinson decided to stop Riggs. After he caught up to Riggs, Haakinson turned on his overhead lights. Riggs did not stop. Riggs continued down the street and accelerated onto another street. Haakinson then activated his siren. Riggs turned onto another street and again accelerated. Riggs turned on yet another street, entered his driveway, and pulled into his backyard where he was arrested.

BRIEFING

Riggs raises three issues on appeal. We initially thought Riggs intended his "Motion for Continuation," filed on August 28, 2014, to be his brief in this appeal. The State filed a brief in response. However, after further review of the document filed by Riggs and the "Appellant's Brief" submitted by Riggs and filed a year later, we conclude the "Motion for Continuation" was not intended to be Riggs's appellate brief. Accordingly, we only consider the issues raised in Riggs's "Appellant's Brief" filed on August 3, 2015 and the State's supplemental brief filed in response thereto.

NOTICE OF HEARING

In his first issue, Riggs contends the State acted in bad faith when it mailed the notice of the hearing to Riggs's last known address when the State knew or should have known Riggs was in jail. Riggs claimed at the hearing that he did not know about the hearing until the morning of the hearing and was unprepared to continue.[1] Texas Rules of Civil Procedure 21 and 21a provide that notice of a hearing must be served upon a party to the hearing at the party's last known address and may be served by mail. *See* TEX. R. APP. P. 21; 21a. At the hearing on the petition for forfeiture, the State introduced a copy of its draft letter to Riggs, dated January 22, 2014, notifying him that the hearing was scheduled for March 13, 2014. It also introduced the "green card" showing that the letter was delivered by certified mail, return receipt requested, and signed for by someone at the residence. Riggs did not object to this evidence.

It is, however, a bit incongruous for the State to be holding Riggs in jail on an offense while it is sending notices to Riggs's home address related to the forfeiture of the car which he was driving during the offense for which the State is prosecuting Riggs. Nevertheless, Riggs obtained notice of the hearing, attended and participated in the hearing, and completion of the hearing was continued so that Riggs could prepare and present his response to the State's evidence regarding forfeiture of the car. Upon

[1] The State was permitted to present its evidence on the date noticed for the hearing. Because Riggs complained that he did not receive notice of the hearing on the petition, the trial court gave Riggs a continuance to the next month to be able to present his defense. At the continued hearing, Riggs cross-examined a witness previously called by the State and called his own witnesses.

Riggs's complaint about the manner and timing of his receipt of the notice of the hearing, the trial court granted relief to Riggs. Riggs did not object to the nature of the relief granted in response to his complaint. Riggs failed to pursue his complaint to an adverse ruling. *See* TEX. R. APP. P. 33.1(a); *Tucker v. State*, 990 S.W.2d 261, 262 (Tex. Crim. App. 1999).

Accordingly, Riggs's first issue presents nothing for review and is overruled.

FABRICATED AND FALSE EVIDENCE

In his second issue, Riggs asserts that the State, through Haakinson, presented false and fabricated evidence. Specifically, he contends the warrant relied upon by Haakinson was fabricated and that Haakinson's testimony at the hearing on the State's petition was false because it varied from his subsequent testimony at Riggs's trial for evading arrest.[2]

Riggs argues that the warrant used by Haakinson as a reason to initially try to stop Riggs was fabricated because the warrant was dated two days after Riggs's arrest. Riggs cites to an "individual Docket Report" which allegedly shows the warrant was inactive on May 16, 2012 as support for his proposition. However, there is no such document in the record of this appeal, meaning no such document was introduced at the hearing on the State's petition. The only document introduced regarding the

[2] We delayed the disposition of this forfeiture proceeding until we had addressed the criminal conviction arising from Riggs's related criminal proceeding. *See Riggs v. State*, No. 10-14-00229-CR, 2015 Tex. App. LEXIS 12561 (App.—Waco 2015, pet. filed).

warrant was the warrant, itself, which indicates it was signed on May 14, 2012. Accordingly, there is no evidence in this record that the warrant was fabricated.

Further, Riggs argues that Haakinson presented false testimony at the hearing on the State's petition because some of it varied from the testimony the officer presented at Riggs's later trial for evading arrest or detention. Riggs's criminal trial took place on July 28-29, 2014; three months after the last hearing on the State's petition for forfeiture.

We examine the record as it existed at the time of the final judgment or relevant hearing. *See* e.g. *Alexander v. Lynda's Boutique*, 134 S.W.3d 845, 848 (Tex. 2004) (final judgment); *Methodist Home v. Marshall*, 830 S.W.2d 220, 232 (Tex. App.—Dallas 1992, no pet.) (mandamus). *See also O'Hara v. State*, 27 S.W.3d 548, 551 (Tex. Crim. App. 2000) (motion to suppress). Because Haakinson's testimony from Riggs's subsequent criminal trial was not before the trial court at the time of the hearing on the petition for forfeiture, we do not consider it to resolve this part of Riggs's issue.

If Riggs is asking that we take judicial notice of testimony from Riggs's subsequent criminal trial, we cannot do so. As an appellate court, we may take judicial notice of a relevant fact that is "either (1) generally known within the territorial jurisdiction of the trial court or (2) capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned." TEX. R. EVID. 201(b); *Freedom Communs., Inc. v. Coronado*, 372 S.W.3d 621, 623 (Tex. 2012). Testimony adduced during a criminal trial cannot be "generally known within the territorial

jurisdiction of the trial court" and therefore the testimony would necessarily have to be "capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned" under subsection (2). TEX. R. EVID. 201(b). *Davis v. State*, 293 S.W.3d 794, 797 (Tex. App.—Waco 2009, no pet.). Assertions made by an individual, even under oath, are generally not the type of facts capable of accurate and ready determination by a source whose accuracy cannot reasonably be questioned. *Id*. Thus, because the testimony from Riggs's subsequent criminal trial does not meet the requirements of Rule 201, we do not consider it in review of this part of Riggs's issue.

We may also take judicial notice of facts which aid in the determination of our jurisdiction. *See Freedom Communs., Inc.*, 372 S.W.3d at 623-624; see also *Univ. of Hous. v. Barth*, 403 S.W.3d 851, 856 (Tex. 2013). Testimony from Riggs's subsequent criminal trial does not aid in the determination of our jurisdiction. Therefore, we do not consider it for this reason as well.

Because we do not consider Haakinson's testimony at Riggs's subsequent criminal trial, there is no evidence in the record that Haakinson presented false testimony.

Riggs's second issue is overruled.

REASONABLE PURSUIT AND SAFE PLACE

Riggs's third issue which is titled "REASONABLE SUSPISION PROBABLE CAUSE, AND FOURTH AMENDMENT VIOLATION" is comprised of two parts: 1)

was Haakinson's pursuit of Riggs reasonable, and 2) was Riggs correctly charged with evading arrest? We note initially that this issue is multifarious. An issue is multifarious when it raises more than one specific complaint. *Quiroz v. Gray*, 441 S.W.3d 588, 591 (Tex. App.—El Paso 2014, no pet.). We are permitted to reject multifarious issues. *Hamilton v. Williams*, 298 S.W.3d 334, 338 n.3 (Tex. App.—Fort Worth 2009, pet. denied). However, we also have the discretion to consider a multifarious issue provided it can be determined, with reasonable certainty, the alleged error about which the complaint is made. *Thornton v. D.F.W. Christian Television, Inc.*, 925 S.W.2d 17, 22-3 (Tex. App.—Dallas 1995), *rev'd on other grounds*, 933 S.W.2d 488 (Tex. 1996). Because we believe we can determine the alleged errors Riggs is complaining about, we will exercise our discretion and consider each issue in turn.

In the first part of this issue, Riggs questions whether Haakinson had reasonable suspicion to pursue Riggs because the warrant Haakinson relied upon was fabricated. Reasonable suspicion exists if 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 actually is, has been, or soon will be engaged in criminal activity. *Castro v. State*, 227 S.W.3d 737, 741 (Tex. Crim. App. 2007). We have already determined that there was no evidence presented at the hearing to show the warrant was fabricated. Moreover, we note that Riggs does not dispute that his license to drive was suspended. Thus, because Haakinson testified dispatch informed him that

Riggs had an outstanding warrant for his arrest *and* his driver's license was suspended, we find Haakinson had reasonable suspicion to pursue Riggs. The first part to Riggs's third issue is overruled.

In the second part of this issue, Riggs questions whether he should have been charged with evading arrest because, as he alleges, he had no reason to believe he would be arrested and was allowed to drive to a safe place. Although Riggs attacked Haakinson's belief that there was an outstanding warrant, Riggs did not testify and did not otherwise present any evidence or make any argument to the trial court that Riggs had no reason to believe he would be arrested. Further, although Riggs argued to the trial court at the conclusion of the hearing that Riggs had the right to proceed to a designated area where he would feel safe before stopping, even if there is such a right, for which we have found no Texas authority, Riggs did not testify and presented no other evidence to suggest he was fearful of being stopped in the streets through which he was then traveling and was proceeding to a safe area. The second part of Riggs's third issue is overruled.

CONCLUSION

Having overruled each issue presented, we affirm the judgment of the trial court. Further, Riggs's "Motion to Rebuttal" filed on October 8, 2015 is dismissed as moot.

TOM GRAY
Chief Justice

Before Chief Justice Gray,
Justice Davis, and
Justice Scoggins
Motion dismissed as moot
Affirmed
Opinion delivered and filed March 10, 2016
[CV06]