TEXAS COURT OF APPEALS, THIRD DISTRICT, AT AUSTIN

NO. 03-15-00110-CR

Thomas Krausz, Appellant

v.

The State of Texas, Appellee

FROM THE DISTRICT COURT OF TRAVIS COUNTY, 299TH JUDICIAL DISTRICT
NO. D-1-DC-13-302230, HONORABLE KAREN SAGE, JUDGE PRESIDING

M E M O R A N D U M O P I N I O N

The trial court found Thomas Krausz guilty of possession of a prohibited weapon, a firearm silencer, and assessed punishment at five years' imprisonment.[1] *See* Act of May 23, 1973, 63d Leg., R.S., ch. 399, § 1, sec. 46.06(a)(4), 1973 Tex. Gen. Laws 883, 964 (amended 2015) (current version at Tex. Penal Code § 46.05(a)(1)(D)). In two issues on appeal, Krausz contends that the court erred by sustaining the State's hearsay objection to a crime lab report and that the evidence is insufficient to support his conviction. We will affirm the judgment.

[1] The Legislature subsequently amended the statute prohibiting firearm silencers, creating an exception for those that are "registered in the National Firearms Registration and Transfer Record maintained by the Bureau of Alcohol, Tobacco, Firearms and Explosives or classified as a curio or relic by the United States Department of Justice." Tex. Penal Code § 46.05(a)(1)(D).

BACKGROUND

Krausz was charged in three separate indictments with the offenses of burglary of a habitation, theft of a firearm, and possession of a prohibited weapon, a firearm silencer. Krausz pleaded guilty at trial to burglary of a habitation and theft of a firearm. He pleaded not guilty to possession of a prohibited weapon, waived a jury, and proceeded to a bench trial.

During trial, Officer Andrew Vera of the Austin Police Department testified that when he arrested Krausz on the other charges, Krausz's vehicle was searched and inventoried. Crime scene specialist Amanda Brinkley testified that she was called to the scene of Krausz's arrest to photograph the vehicle and collect items from inside it. Brinkley further testified that among the items found and photographed in Krausz's vehicle was a modified water bottle wrapped in black electrical tape.

Officer Adrian Chopin of the Austin Police Department, who had specific police training with firearms, was an ATF-licensed firearms dealer familiar with homemade silencers. He testified that he participated in the search of Krausz's vehicle and that he quickly recognized the modified water bottle to be a firearm suppressor. Officer Chopin and Austin Police Department Detective David Smith, who also had experience and training with firearms and silencers, testified about how the item was made with multiple water bottles to create chambers known as a "baffle system." Officer Chopin testified that a hole toward the back of the item was closely matched with a pistol that was also found in Krausz's vehicle. Officer Chopin further testified, without objection, that the item was an illegal firearm silencer.

Detective Smith testified that duct tape or electrical tape could be used to attach a gun to a silencer. Detective Smith also testified without objection that—based on his knowledge, training, and experience as a firearms instructor and police officer—the modified water bottle identified as State's exhibit 70 was a device designed to muffle the sound of a gun and that it was a prohibited weapon, a firearms silencer. He testified that he researched homemade suppressors online and found "this exact construction outlined multiple times." Detective Smith further testified that he inserted the stolen .22 Ruger firearm found in Krausz's vehicle into the homemade silencer and that it fit.

Krausz testified that State's exhibit 70 was not a silencer but a homemade water rocket. At the conclusion of the trial, the court found Krausz guilty of possession of a prohibited weapon as charged and assessed punishment at five years' imprisonment. This appeal followed.

DISCUSSION

Challenge to exclusion of crime lab report was not preserved

In his first issue, Krausz contends that the trial court abused its discretion by sustaining the State's hearsay objection to a crime lab report. At trial, Krausz attempted to enter the report during cross-examination of Officer Chopin. The State objected to the report as hearsay, noting that Officer Chopin was not the author of the report. Krausz responded only that the State had produced the report in discovery. The trial court determined that the State's provision of the report did not make it admissible and sustained the objection. On appeal, Krausz contends for the first time that the report was admissible as an admission by a party opponent. However, an argument on appeal must comport with the argument at trial. *Reyna v. State*, 168 S.W.3d 173, 177 (Tex. Crim.

App. 2005); *see Jones v. State*, No. 09-11-00156-CR, 2012 Tex. App. LEXIS 9752, at *10-11 (Tex. App.—Beaumont Nov. 28, 2012, no pet.) (mem. op., not designated for publication) (concluding that appellant failed to preserve appellate arguments about admissibility of toxicology report because those arguments differed from her argument at trial that report was admissible because State had provided report in discovery). Because Krausz did not argue to the trial court that the report was an admission by a party opponent, he has not preserved that argument for our review. *See* Tex. R. App. P. 33.1(a).

Sufficient evidence supported Krausz's conviction for possession of a prohibited weapon

Krausz's second issue complains that the evidence was insufficient to support his conviction. Under the legal-sufficiency standard, we view the evidence in the light most favorable to the verdict and 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 (1979); *Brooks v. State*, 323 S.W.3d 893, 899 (Tex. Crim. App. 2010). We may not substitute our judgment for that of the fact finder by reevaluating the weight or credibility of the evidence, but must defer to the fact finder's resolution of conflicts in the evidence, weighing of the testimony, and drawing of reasonable inferences from basic facts to ultimate facts. *Isassi v. State*, 330 S.W.3d 633, 638 (Tex. Crim. App. 2010). We apply the same standard to direct and circumstantial evidence. *Id*. Circumstantial evidence is as probative as direct evidence in establishing the guilt of a defendant, and circumstantial evidence alone can be sufficient to establish guilt. *Hooper v. State*, 214 S.W.3d 9, 13 (Tex. Crim. App. 2007). Each fact need not point directly and independently to appellant's guilt,

as long as the cumulative force of all the incriminating circumstances is sufficient to support the conviction. *Id*.

The indictment at issue in this appeal alleged that Krausz intentionally or knowingly possessed or transported a prohibited weapon, a firearm silencer, in violation of section 46.05(a)(4) of the Texas Penal Code. A "firearm silencer" is defined in the Penal Code as "any device designed, made or adapted to muffle the report of a firearm." Tex. Penal Code § 46.01(4). Krausz correctly notes that conviction for possession of a prohibited weapon requires proof of a culpable mental state, but that element is almost always inferred from acts and words. *See Moore v. State*, 969 S.W.2d 4, 10 (Tex. Crim. App. 1998) ("Mental culpability is of such a nature that it generally must be inferred from the circumstances under which a prohibited act or omission occurs.").

We conclude that the direct and circumstantial evidence in this record was legally sufficient to show that Krausz possessed or transported a firearms silencer, and that the court as fact finder could have inferred from the evidence that Krausz did so intentionally or knowingly. Evidence at trial showed that after Krausz was arrested, police found a modified water bottle wrapped in black electrical tape inside Krausz's vehicle, which he had driven to the scene. Krausz testified that he personally made the item in question using three water bottles. While he claimed it was a water rocket, he acknowledged that a water rocket would have been made using a single, two-liter bottle. He also acknowledged that a photograph taken during the search of his vehicle depicted none of the components typically used for a water rocket, such as a cork, a water hose, or a clamp. Officer Chopin, based on his training, quickly recognized the item as a firearms suppressor. Officer Chopin and Detective Smith, both of whom had experience and training with firearms and

silencers, opined without objection that State's exhibit 70 was a homemade firearm silencer designed to muffle the sound of a gun. At the conclusion of the trial, the judge stated that she found Officer Chopin's and Detective Smith's testimony credible. She also stated, "[T]he fact that it was found in a car with a gun that actually fits the silencer is even more circumstantial evidence that it is actually a silencer." Thus the trial court, as fact finder, implicitly rejected Krausz's testimony that State's exhibit 70 was a homemade water rocket.[2] We defer to these credibility determinations because it is "the responsibility of the trier of fact to fairly resolve conflicts in testimony, to weigh the evidence, and to draw reasonable inferences from basic facts to ultimate facts." *Isassi*, 330 S.W.3d at 638. We may not reevaluate the weight and credibility of the evidence in this record. *See id*.

Krausz contends that the testimony from Officer Chopin and Detective Smith was inadmissible because in his view, they were not firearms experts and they relied on information in an affidavit for an arrest warrant that referred to Wikipedia and Wikimedia as source material. But Officer Chopin and Detective Smith testified based on their training and experience, not based on those Internet sources. *Cf. D Magazine Partners, L.P. v. Rosenthal*, No. 15-0790, 2017 Tex. LEXIS 296, at *15-16 (Tex. Mar. 17, 2017) (concluding that while Wikipedia may often be useful as starting point for research purposes, "it is unlikely that Wikipedia could suffice as the sole source of authority on an issue of any significance to a case"). Even if their testimony had been inadmissible, consideration of that testimony would still be proper in our legal sufficiency analysis. *See Soliz v.*

[2] During sentencing, after noting that Krausz had testified at both phases of trial, the judge specifically stated that she found Krausz's "testimony not credible at all."

State, 432 S.W.3d 895, 900 (Tex. Crim. App. 2014) ("We consider even inadmissible evidence when reviewing the sufficiency of the evidence.").

We conclude that the evidence at trial and reasonable inferences from it, viewed in the light most favorable to the verdict, was sufficient to allow a rational fact finder to find beyond a reasonable doubt that Krausz committed the offense of possession of a prohibited weapon, a firearms silencer. *See Brooks*, 323 S.W.3d at 899. We overrule Krausz's second issue.

CONCLUSION

We affirm the judgment of conviction.

Jeff Rose, Chief Justice

Before Chief Justice Rose, Justices Pemberton and Field

Affirmed

Filed: April 21, 2017

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