NUMBER 13-17-00079-CR

COURT OF APPEALS

THIRTEENTH DISTRICT OF TEXAS

CORPUS CHRISTI - EDINBURG

MELODY ANN GARCIA, Appellant,

v.

THE STATE OF TEXAS, Appellee.

On appeal from the 156th District Court of Bee County, Texas.

MEMORANDUM OPINION

Before Chief Justice Valdez and Justices Benavides and Longoria
Memorandum Opinion by Justice Benavides

By one issue, appellant Melody Ann Garcia appeals her conviction for bail jumping and failure to appear, a third-degree felony. *See* TEX. PENAL CODE ANN. § 38.10 (West, Westlaw through 2017 1st C.S.). Garcia argues the evidence was insufficient to support her conviction. However, through our own review of the record, we have found a non-reversible clerical error in the judgment of conviction. We modify the judgment to correct the error and, as modified, affirm.

I. BACKGROUND

Garcia was charged by indictment of bail jumping and failure to appear for a trial court setting on June 23, 2016. *See id*. The evidence presented at trial reflected that Garcia had a pre-trial hearing in Bee County for a felony charge on June 23, 2016. Ruth Cantu, the chief deputy for the Bee County District Clerk's Office, testified that she was present at the trial court's docket call on that day and that Garcia was not present at the docket call. After calling her name three times outside the courtroom door, the bailiff of the court signed an affidavit stating Garcia was not present. Cantu explained that the district clerk's office did not receive a call from Garcia as to why she was not present in court and there was no motion for continuance filed by Garcia's trial attorneys. Cantu told the court that Garcia had been present at a previous court hearing when the notice of future hearings was given to her and Garcia acknowledged receipt of the dates based on the signed document.

Also testifying was Raul "Rudy" Hernandez, Garcia's bail bondsman. Hernandez explained to the trial court that Garcia checked in with his office weekly and that Garcia had a trial court setting on a misdemeanor offense in Nueces County on the same day as her felony court setting in Bee County. Hernandez stated that Garcia previously had a warrant issued in Nueces County so she decided to attend that court setting. Hernandez testified that Garcia voluntarily turned herself in a few weeks after the June 23 court setting and her bond was forfeited.

The jury found Garcia guilty of bail jumping and failure to appear. They sentenced her to ten years' imprisonment in the Texas Department of Criminal Justice—Institutional Division, but probated Garcia's sentence for five years. This appeal followed.

II. SUFFICIENCY OF THE EVIDENCE

By her sole issue, Garcia argues the evidence was insufficient to support the conviction for bail jumping and failure to appear. *See id*.

A. Standard of Review

When evaluating a sufficiency challenge, the reviewing court views the evidence in the light most favorable to the verdict to determine whether a rational jury could find the defendant guilty beyond a reasonable doubt. *Brooks v. State*, 323 S.W.3d 893, 899 (Tex. Crim. App. 2010) (plurality opinion); *see Jackson v. Virginia*, 443 U.S. 307, 319 (1979). To obtain reversal of his conviction on a claim of insufficiency of the evidence, Garcia must show that no rational jury could have found all the elements of the offense beyond a reasonable doubt. *Brooks*, 323 S.W.3d at 902. The jury is the sole judge of the credibility of the witnesses and the weight to be given to their testimony, and a reviewing court is not to substitute its judgment as to facts for that of the jury as shown through its verdict. *Montgomery v. State*, 369 S.W.3d 188, 192 (Tex. Crim. App. 2012). When the reviewing court is faced with a record supporting contradicting inferences, the court must presume that the jury resolved any such conflict in favor of the verdict, even if it is not explicitly stated in the record. *Id*.

A reviewing court must measure the sufficiency of the evidence by the elements of the offense as defined by a hypothetically correct jury charge. *Villarreal v. State*, 286 S.W.3d 321, 327 (Tex. Crim. App. 2009) (citing *Malik v. State*, 953 S.W.2d 234, 240 (Tex. Crim. App. 1997)). Such a charge is one that accurately sets out the law, is authorized by the indictment, does not unnecessarily increase the State's burden of proof or

unnecessarily restrict the State's theories of liability, and adequately describes the particular offense for which the defendant was tried. *Id*.

B. Applicable Law and Discussion

A person commits the offense of bail jumping and failure to appear when a person (1) lawfully released from custody, with or without bail, (2) on condition that she subsequently appear commits an offense if she (3) intentionally or knowingly fails to appear in accordance with the terms of her release. *See* TEX. PENAL CODE ANN. § 38.10(a). However, "it is a defense to prosecution under this section that the actor had a reasonable excuse for his failure to appear in accordance with the terms of his release." *See id*.(c). Bail jumping is a result-of-conduct oriented offense because the crime is defined in terms of one's objective to produce a specific result. *Walker v. State*, 291 S.W.3d 114, 117 (Tex. App.—Texarkana 2009, no pet.). The *mens rea* element of the offense modifies the conduct element of the offense, so it is the accused's conduct that must be done with the requisite "intentional" or "knowing" culpable mental state. *Id*.

"Proof that the accused was free under an instanter bond is prima facie proof of notice to appear." *Johnson v. State*, 416 S.W.3d 602, 607 (Tex. App.—Houston [14th Dist.] 2013, no pet.). The bond itself satisfies the State's burden of proving that appellant intentionally and knowingly failed to appear in accordance with the terms of the release unless appellant can establish evidence to the contrary. *Id*. Additionally, an appellant's acknowledgement of the notice of a trial setting was sufficient to establish that his failure to appear was done intentionally or knowingly and without reasonable excuse. *Barrera v. State*, 978 S.W.2d 665, 671 (Tex. App.—Corpus Christi 1998, pet. ref'd).

At trial, the State offered a copy of Garcia's bond into evidence. Cantu testified that Garcia had appeared in court and received written notice of the upcoming court dates on May 26, 2016, and acknowledged receipt of the notice of the court hearing dates by her signature. Cantu's testimony and the exhibits offered by the State were prima facie proof that Garcia had notice to appear for court on June 23, 2016.

Garcia did attempt to offer a reasonable excuse for her absence. *See* TEX. PENAL CODE ANN. § 38.10(c). Hernandez testified that Garcia had court settings in both Nueces and Bee Counties on the same day and attended the Nueces County court setting. However, Cantu testified that no one in the district clerk's office was notified of the scheduling conflicts between Garcia's two courts. Additionally, Cantu testified that no motions for continuance had been filed by Garcia's counsel relating to the scheduling conflict. Garcia did not voluntarily turn herself in until after she had spoken with Hernandez, and even then, waited weeks after the court setting before coming in.

The jury is the sole judge of the credibility of the witnesses and the facts presented. *See Montgomery*, 369 S.W.3d at 192. It is within the jury's province to believe or disbelieve the facts presented by Garcia. *See id*. Here, the jury did not find her explanation to be a "reasonable excuse" as required by the penal code. *See* TEX. PENAL CODE ANN. § 38.10(c). We overrule Garcia's sole issue.

III. REFORMATION OF THE JUDGMENT

On review of the record, we observe that the written judgment of conviction for bail jumping and failure to appear contain non-reversible clerical errors. The judgment states that the "Statute for Offense" is "38.14(f) Penal Code." However, penal code section 38.14 relates to "taking or attempting to take a weapon from a peace officer, federal special

investigator, employee or official of a correctional facility, parole officer, community supervision and correction department officer, or commissioned security officer." *See* TEX. PENAL CODE ANN. § 38.14 (West, Westlaw through 2017 1st C.S.).

This Court has authority to modify incorrect judgments when the necessary information is available to do so. *See* TEX. R. APP. P. 43.2(b) (authorizing court of appeals to modify trial court's judgment and affirm it as modified); *Bigley v. State*, 865 S.W.2d 26, 27–28 (Tex. Crim. App. 1993) (concluding that Texas Rules of Appellate Procedure empower courts of appeals to reform judgments). Accordingly, we modify the judgment of conviction to reflect that the "Statute for Offense" is "38.10 Penal Code."

Additionally, the State had amended the indictment prior to the start of trial to reflect a "date of offense" of June 23, 2016, replacing the original date listed in the indictment of June 3, 2016. The judgment reflects the original date listed in the indictment, instead of the amended date. We additionally modify the judgment to reflect the correct "date of offense" being June 23, 2016.

IV. CONCLUSION

We modify the judgment to correct the errors and, as modified, affirm the judgment of the trial court.

GINA M. BENAVIDES,
Justice

Do not publish.
TEX. R. APP. P. 47.2 (b).

Delivered and filed the
3rd day of May, 2018.