NUMBER 13-22-00574-CR

COURT OF APPEALS

THIRTEENTH DISTRICT OF TEXAS

CORPUS CHRISTI – EDINBURG

CODY LEE JONES, **Appellant,**

v.

THE STATE OF TEXAS, **Appellee.**

On appeal from the 24th District Court of DeWitt County, Texas.

MEMORANDUM OPINION

Before Justices Tijerina, Silva, and Peña
Memorandum Opinion by Justice Tijerina

Appellant Cody Lee Jones challenges his conviction of evading arrest or detention with a motor vehicle: appellant's punishment was enhanced to a second-degree felony.[1] *See* TEX. PENAL CODE ANN. § 38.04(a). Appellant was sentenced to ten years'

[1] The State enhanced the punishment alleging that appellant was a repeat felony offender who had previously been convicted of indecency with a child. The jury found appellant guilty of the offense, and appellant pleaded "guilty" to the enhancement paragraph. *See* TEX. PENAL CODE ANN. § 12.42.

confinement. By one issue appellant contends that the evidence is insufficient to support the conviction. We affirm.

I. STANDARD OF REVIEW AND APPLICABLE LAW

In reviewing the sufficiency of the evidence, we consider all the evidence in the light most favorable to the verdict and determine whether any rational fact finder could have found the essential elements of the crime beyond a reasonable doubt based on the evidence and reasonable inferences from that evidence. *Whatley v. State*, 445 S.W.3d 159, 166 (Tex. Crim. App. 2014); *Brooks v. State*, 323 S.W.3d 893, 898–99 (Tex. Crim. App. 2010) (plurality op.). Direct and circumstantial evidence are equally probative. *Clayton v. State*, 235 S.W.3d 772, 778 (Tex. Crim. App. 2007). The fact finder is the exclusive judge of the facts, the credibility of witnesses, and the weight to be given to their testimony. *Brooks*, 323 S.W.3d at 899. We resolve any evidentiary inconsistencies in favor of the judgment. *Id.*

We measure the sufficiency of the evidence in reference to 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); *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." *Villarreal*, 286 S.W.3d at 327 (quoting *Malik*, 953 S.W.2d at 240). Under the Texas Penal Code, a person commits the offense of evading arrest or

detention with a motor vehicle, as charged in this case, "if he intentionally flees from a person he knows is a peace officer . . . attempting lawfully to arrest or detain him." *See* TEX. PENAL CODE ANN. § 38.04(a).

II. PERTINENT FACTS

The evidence presented shows that on the evening of September 6, 2020, 911 dispatch received several complaints that a person in a white truck was "burning rubber," driving recklessly, and driving around the block continuously. Two officers, Irfan Vastani and John Paul Barrera, who were riding in the same vehicle, were then dispatched to the area. Another officer, Frank Parkinson, went to the scene because he was in the area, and he arrived first. Officer Parkinson identified appellant as the suspect, and he engaged in a conversation with him. Officer Parkinson and appellant stayed in their vehicles and conversed through their driver side windows.

Officers Vastani and Barrera then arrived without the overhead lights and sirens activated. Officer Parkinson told appellant that Officers Vastani and Barrera were there to speak with him, that he needed to wait for them, and that Officer Parkinson planned on "pulling over." After two witnesses who were in the vicinity informed the officers that appellant was the suspect, Officer Vastani activated the overhead lights of his vehicle. Officer Barrera exited the vehicle and was approaching appellant's vehicle on foot, when appellant sped off in his vehicle. Officer Vastani activated the siren; however, appellant nonetheless drove off.

Officer Barrera reentered the vehicle, and the officers pursued appellant's vehicle.

Officer Parkinson activated his overhead lights and siren and joined the pursuit. Appellant was speeding and driving recklessly while the police pursued him on wet roads. At a certain point, appellant's vehicle spun out of control, and the officers were then able to contain him. Officer Parkinson testified that prior to boxing in appellant's vehicle, appellant was trying to flee again. Appellant stuck his hand up in the air, while leaning out of the driver's side window. After the officers placed appellant in the back of one of the police vehicles, in a video of the incident admitted at trial, appellant screamed that he could not breathe; therefore, the officers took him to the hospital. The nurse, who attended to appellant in the emergency room, testified that he was diagnosed with alcohol abuse with intoxication. She documented in her notes, admitted by the trial court, that appellant "state[d]" that he "was running from the cops."

III. DISCUSSION

Appellant argues that there is no evidence supporting a finding that he knew that the officers were attempting to arrest him. Specifically, appellant bases his argument on the fact that the first officer he encountered did not intend to arrest or detain him and that appellant was unaware that the two other officers intended to detain or arrest him. Appellant states that because he was highly intoxicated, the jury merely speculated that he saw the overhead lights when the officers pursued him and that he knew that the officer intended to arrest or detain him.

We conclude that appellant's argument is without merit. The evidence presented shows that Officer Parkinson informed appellant that he needed to wait because Officers

Vastani and Barrera were going to talk to him. The officers had the overhead lights activated prior to appellant speeding off. In addition, the officers then activated their sirens, and appellant continued to drive away at a high rate of speed. The jury was free to infer from this evidence that appellant knew that he was being pursued by the officers because they intended to detain or arrest him. *See also Duvall v. State*, 367 S.W.3d 509, 513 (Tex. App.—Texarkana 2012, pet. ref'd) (explaining that generally, it is "[p]roof that an officer in a vehicle is attempting to arrest or detain a person" if the "officer display[s] authority by the use of overhead/emergency lights and siren," the officer "point[s] to a driver to pull the vehicle over," or uses verbal commands). Moreover, appellant admitted to the nurse that he was "running from police" when he crashed his vehicle. This evidence, along with evidence that Officer Parkinson told appellant to wait because the other officers needed to talk to him, and evidence that they all pursued him with activated overhead lights and sirens, supports the jury's finding that appellant knew that police officers were chasing him and intended to detain him. *See* TEX. PENAL CODE ANN. § 38.04(a).

Accordingly, considering all the evidence in the light most favorable to the verdict and drawing reasonable inferences therefrom, we conclude that a rational fact finder could have found that appellant knew that he was fleeing from a person he knew was a peace officer attempting to lawfully arrest or detain him, *see* TEX. PENAL CODE ANN. § 38.04(a), beyond a reasonable doubt. *See Whatley*, 445 S.W.3d at 166; *Brooks*, 323 S.W.3d at 898–99; *see also Duvall*, 367 S.W.3d at 513. We overrule appellant's sole issue.

IV. CONCLUSION

We affirm the trial court's judgment.

JAIME TIJERINA
Justice

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

Delivered and filed on the
10th day of August, 2023.