NO. 12-15-00237-CR

IN THE COURT OF APPEALS

TWELFTH COURT OF APPEALS DISTRICT

TYLER, TEXAS

APRIL ALLISON POWERS, APPELLANT	*§*	*APPEAL FROM THE 145TH*
V.	*§*	*JUDICIAL DISTRICT COURT*
THE STATE OF TEXAS, APPELLEE	*§*	*NACOGDOCHES COUNTY, TEXAS*

MEMORANDUM OPINION

April Allison Powers appeals her conviction for failure to stop and render aid.[1] In three issues, Appellant argues that the statute authorizing her conviction is unconstitutional on its face and as applied, and that the evidence is insufficient to support the verdict. We affirm.

BACKGROUND

Appellant was charged by indictment with two counts of failure to stop and render aid. She pleaded "not guilty," and the matter proceeded to a jury trial.

At trial, the evidence showed that Appellant was driving a pickup truck that collided with a utility pole. Billy Pleasant and his nephew, Willie Pleasant, were passengers in the truck and were injured in the collision. Because of a warrant for her arrest, Appellant left the scene before the police or emergency medical personnel arrived.

Ultimately, the jury found Appellant "guilty" of one count of failure to stop and render aid to Willie. The trial court assessed her punishment at imprisonment for twenty-five years. This appeal followed.

[1] The judgment and indictment refer to the offense as "vehicle involved in accident." Here, we refer to it by its customary name, "failure to stop and render aid."

<u>CONSTITUTIONALITY OF STATUTE</u>

In Appellant's first and second issues, she argues that the statute under which she was convicted is unconstitutionally vague on its face and as applied.

Standard of Review and Applicable Law

When the constitutionality of a statute is challenged on appeal, we review the trial court's ruling de novo. ***Lawson v. State***, 283 S.W.3d 438, 440 (Tex. App.—Fort Worth 2009, pet. ref'd). We presume the statute is valid and that the legislature did not act unreasonably or arbitrarily in enacting it. ***Ex parte Granviel***, 561 S.W.2d 503, 511 (Tex. Crim. App. 1978). The burden rests on the party challenging the statute to establish its unconstitutionality. ***Id.*** While we cannot rewrite a statute, we must seek to interpret statutes in such a way as to uphold their constitutionality. ***Lebo v. State***, 90 S.W.3d 324, 329-30 (Tex. Crim. App. 2002).

To comport with due process requirements, a criminal law must provide the populace with fair notice of the activity it criminalizes. ***Bynum v. State***, 767 S.W.2d 769, 773 (Tex. Crim. App. 1989). When a statute is challenged for vagueness, the reviewing court focuses on fairness rather than engaging in a mere rhetorical critique. ***Id.*** A law must inform a person of ordinary intelligence what is prohibited, and provide an explicit standard for law enforcement officials. ***Watson v. State***, 369 S.W.3d 865, 870 (Tex. Crim. App. 2012). A statute is not unconstitutionally vague merely because the words or terms used are not specifically defined. ***Bynum***, 767 S.W.2d at 774.

A statute may be found unconstitutional "on its face" or "as applied" to a specific set of facts. ***Scott v. State***, 322 S.W.3d 662, 665 n.1 (Tex. Crim. App. 2010). A claim that a statute is unconstitutional "on its face" is a claim that the statute, by its terms, always operates unconstitutionally. ***Gillenwaters v. State***, 205 S.W.3d 534, 536 n.2 (Tex. Crim. App. 2006). A claim that a statute is unconstitutional "as applied" is a claim that the statute operates unconstitutionally with respect to the claimant because of her particular circumstances. ***Id.*** at 536 n.3. A facial vagueness challenge where no First Amendment rights are involved is upheld only if the statute is impermissibly vague in all of its applications. ***Bynum***, 767 S.W.2d at 774.

A defendant may not raise for the first time on appeal a facial challenge to the constitutionality of a statute. ***Karenev v. State***, 281 S.W.3d 428, 434 (Tex. Crim. App. 2009). Nor can she raise for the first time on appeal a challenge to the constitutionality of a statute as applied to her specific conduct. ***Curry v. State***, 910 S.W.2d 490, 496 (Tex. Crim. App. 1995).

Under transportation code section 550.021, a person commits an offense if she is the operator of a vehicle involved in an accident that results in injury to a person, and she does not "remain at the scene of the accident until [she] complies with the requirements of Section 550.023." TEX. TRANSP. CODE ANN. § 550.021 (West Supp. 2016). Under section 550.023, the operator is required to "provide any person injured in the accident reasonable assistance, including transporting or making arrangements for transporting the person to a physician or hospital for medical treatment if it is apparent that treatment is necessary, or if the injured person requests the transportation." ***Id.*** § 550.023 (West 2011).

Analysis

Appellant argues that section 550.023 is unconstitutionally vague on its face because it does not define "reasonable assistance." Appellant further argues that section 550.023 is unconstitutionally vague as it applies to her conduct because she could not have been on notice of what conduct constituted "reasonable assistance" under the circumstances.

However, the record does not indicate that Appellant raised at trial either a facial challenge to the constitutionality of section 550.023 or a challenge to the constitutionality of the statute as applied. Therefore, these issues were not preserved for our review. *See* ***Karenev***, 281 S.W.3d at 434; ***Curry***, 910 S.W.2d at 496. Accordingly, we overrule Appellant's first and second issues.

EVIDENTIARY SUFFICIENCY

In Appellant's third issue, she argues that the evidence of her guilt is insufficient because other people provided reasonable assistance to Willie.

Standard of Review and Governing Law

The ***Jackson v. Virginia***[2] legal sufficiency standard is the only standard that a reviewing court should apply in determining whether the evidence is sufficient to support each element of a criminal offense that the state is required to prove beyond a reasonable doubt. *See* ***Brooks v. State***, 323 S.W.3d 893, 895 (Tex. Crim. App. 2010). Legal sufficiency is the constitutional minimum required by the Due Process Clause of the Fourteenth Amendment to sustain a criminal conviction. *See* ***Jackson***, 443 U.S. at 315-16, 99 S. Ct. at 2786-87; *see also* ***Escobedo v. State***, 6 S.W.3d 1, 6 (Tex. App.–San Antonio 1999, pet. ref'd).

[2] 443 U.S. 307, 315-16, 99 S. Ct. 2781, 2786-87, 61 L. Ed. 2d 560 (1979).

The standard for reviewing a legal sufficiency challenge is whether any rational trier of fact could have found the essential elements of the offense beyond a reasonable doubt. *See* ***Jackson***, 443 U.S. at 320, 99 S. Ct. at 2789; *see also* ***Johnson v. State***, 871 S.W.2d 183, 186 (Tex. Crim. App. 1993). The evidence is examined in the light most favorable to the verdict. *See* ***Jackson***, 443 U.S. at 320, 99 S. Ct. at 2789; ***Johnson***, 871 S.W.2d at 186. This requires the reviewing court to defer to the trier of fact's credibility and weight determinations, because the trier of fact is the sole judge of the witnesses' credibility and the weight to be given their testimony. *See* ***Brooks***, 323 S.W.3d at 899; ***Jackson***, 443 U.S. at 319, 99 S. Ct. at 2789. A "court faced with a record of historical facts that supports conflicting inferences must presume—even if it does not affirmatively appear in the record—that the trier of fact resolved any such conflicts in favor of the prosecution, and must defer to that resolution." ***Jackson***, 443 U.S. at 326, 99 S. Ct. at 2793. A successful legal sufficiency challenge will result in rendition of an acquittal by the reviewing court. *See* ***Tibbs v. Florida***, 457 U.S. 31, 41-42, 102 S. Ct. 2211, 2217-18, 72 L. Ed. 2d 652 (1982).

The sufficiency of the evidence is measured against the offense as defined by a hypothetically correct jury charge. *See* ***Malik v. State***, 953 S.W.2d 234, 240 (Tex. Crim. App. 1997). Such a charge would include 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 is tried." ***Id.***

To prove Appellant guilty of failure to stop and render aid, the State was required to prove that (1) she was the operator of a vehicle; (2) she was intentionally or knowingly involved in an accident; (3) the accident resulted in injury to Willie; (4) it was apparent that medical treatment was necessary; and (5) she failed to render reasonable assistance. *See* TEX. TRANSP. CODE ANN. §§ 550.021, 550.023; ***McCown v. State***, 192 S.W.3d 158, 162 (Tex. App.–Fort Worth 2006, pet. ref'd). We construe section 550.023 to contain an objective standard requiring a driver to provide the injured person the assistance that would appear to an ordinary person to be reasonable under the circumstances.[3]

[3] In construing an early statute requiring the driver of a vehicle that strikes a person to render "all necessary assistance" to the injured person, the court of criminal appeals concluded that the statute required the driver to render "the aid which would reasonably appear to him as an ordinary person at the time to be necessary." ***Scott v.***

Analysis

At trial, Officer Raymond Read of the Nacogdoches Police Department testified that he was dispatched to an accident scene. When he arrived, he found Billy in the driver's seat of the truck. Billy initially told Read that he had been driving the truck. But other witnesses at the scene told Read that a black female was driving, she fell out of the truck before it hit the pole, and she jumped up and ran away. When Read confronted Billy with this information, he admitted that Appellant was the driver. Read said that Billy was disoriented and lethargic, but did not otherwise appear injured when he first saw him. A large knot later arose on Billy's forehead. Read testified that Willie returned to the scene holding a T-shirt to his chin. His chin was split from side to side, all the way to the bone. Emergency medical personnel transported Willie to the hospital. Appellant never returned to the scene. Read did not know who called 911.

Tammatha Ruffin testified that she saw Appellant driving earlier that day. She was walking down a nearby street when she heard the truck crash into the pole. When she arrived at the scene, Ruffin saw Billy and Willie inside the truck. Other people were also present, but Ruffin did not see Appellant. On cross-examination, she agreed with defense counsel that Willie was outside the truck when she arrived. He was walking and his face was bleeding. She heard someone yelling, "Call 911," and she testified that it might have been Appellant, but Ruffin could not remember seeing Appellant. Ruffin testified that she takes a large amount of medication and could not remember everything about the incident.

Billy Douglass testified that he lives on the street where the accident occurred. On the day of the accident, he was working on his lawn mower when he heard a vehicle traveling at a somewhat high rate of speed. He looked and saw a truck attempt to turn left. As it attempted to make the turn, the door flew open and Appellant fell out. The truck hit a utility pole next to Douglass's house. Appellant stood up, approached the truck, and asked whether the occupants were okay. Then she immediately said, "Well, I got a warrant. I can't stay. I got to go." Appellant ran from the scene. Douglass never heard Appellant scream for someone to call 911. Willie sat in the truck for about five minutes before getting out.

Lyndon Pleasant testified that Billy is his father. On the day of the accident, Lyndon's friend called him at work and said, "April wrecked your dad truck and left him." Lyndon drove

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State, 233 S.W. 1097, 1100 (Tex. Crim. App. 1921). We conclude that section 550.023 contains a similar objective standard.

to the scene of the accident. When he arrived, the police were there, but the ambulance had not yet arrived. Billy was still in the truck. His head was swollen and he said he had a headache. Willie was in a truck with Lyndon's cousin. There was a large amount of blood on Willie because of his injury. Appellant was not present. Lyndon took Billy home to put away his groceries and ensured that his truck was towed. Then he took Billy to the hospital. Billy, who was in his seventies, was never the same after the accident. He died three to six months later.

Willie testified that he was in town for Billy's son's funeral when the accident occurred. He went to Billy's house that morning and found Billy and Appellant in the truck. They were going to sell some scrap metal, and Willie decided to go with them. After selling the scrap metal, they went to the grocery store. On the way back to Billy's house, Appellant was driving very fast. She and Billy were arguing about money. As Appellant began to turn a corner very quickly, she exited the truck, and the truck hit a utility pole. Willie's mouth and chin were injured in the collision such that the skin hung down from his chin. Willie did not see Appellant return to the truck or hear her say anything to him. Although several people were in the area, no one tried to help him. After sitting in the truck for a bit, Willie got out and walked to his sister's house. Willie's sister wrapped a towel around his mouth because he was losing a large amount of blood. Willie returned to the scene, where he was placed in an ambulance and transported to the hospital for stitches. He had difficulty eating or drinking for months afterwards and almost died because of the injury.

Appellant testified that she and Billy were in a long term relationship at the time of the accident. That morning, she, Billy, and Willie went to the salvage yard, the grocery store, and a couple of other places. Appellant was driving Billy's truck. She had a problem with the accelerator as they approached a corner. The driver's side door, which they also had problems with, swung open. Appellant tried to close it and was thrown out of the truck before it hit the pole. She jumped up and ran to the truck. Billy was in the driver's seat trying to start the truck. Appellant asked if he was okay. He said that he was fine and told Appellant to "get back" and "go." Billy did not have any cuts or bruises on his face and did not appear confused. Willie was getting out of the truck. Appellant saw Douglass, Ruffin, and Jessica Murphy. She told Murphy to call 911. At some point, Appellant saw Willie walking back toward the scene with his mouth bleeding. Murphy was on the phone with 911 at that time. Appellant ran up to Willie and gave

him a piece of a T-shirt from Billy's truck. Aware that there was a warrant for her arrest, Appellant left the scene before the ambulance arrived. She could hear sirens as she was leaving.

Appellant argues the evidence is insufficient to support her conviction because there is no evidence that she could have done anything for Willie that was not done for him by others. In support of this argument, Appellant notes that the court of criminal appeals has stated that, in a prosecution for an offense based on predecessor statutes to sections 550.021 and 550.023, "the accused's failure to do for the injured party that which was done by others would not be criminal." ***Bowden v. State***, 361 S.W.2d 207, 208 (Tex. Crim. App. 1962).

In ***Bowden***, a woman was injured in an accident that occurred as she was turning into her driveway. ***Id.*** The woman's husband heard the crash and came outside. ***Id.*** He was assisting her when the other driver staggered into him and asked him not to call the police. ***Id.*** The woman's husband and daughter helped her to the husband's car while Appellant followed. ***Id.*** The husband told the driver to stay there and wait for the police, and he took his wife to the hospital. ***Id.*** The court of criminal appeals held the evidence insufficient to support the driver's conviction for failure to stop and render aid. ***Id.***

Like the evidence in ***Bowden***, the evidence in this case shows that other people assisted the injured person. But unlike the evidence in this case, the evidence in ***Bowden*** showed that the driver remained at the scene while the assistance was provided.[4] We agree with our sister courts that have held there is an important distinction between remaining at the scene of an accident while others assist the injured, and fleeing the scene before assistance is provided. *See* ***Sheldon v. State***, 100 S.W.3d 497, 504 (Tex. App.—Austin 2003, pet. ref'd); ***Allen v. State***, 971 S.W.2d 715, 718-19 (Tex. App.—Houston [14th Dist.] 1998, no pet.). Viewing the evidence in the light most favorable to the jury's verdict, we conclude that the jury was rationally justified in finding, beyond a reasonable doubt, that Appellant committed failure to stop and render aid. *See* ***Jackson***, 443 U.S. at 319, 99 S. Ct. at 2789; *see also* ***Brooks***, 323 S.W.3d at 899; TEX. TRANSP. CODE ANN. §§ 550.021, 550.023.

Citing penal code section 6.04(a), Appellant further argues that the evidence is insufficient because there is no causation. Under section 6.04(a), "[a] person is criminally responsible if the result would not have occurred but for his conduct, operating either alone or

[4] Appellant provided conflicting evidence through her testimony. But the jury, as the sole judge of the credibility of the witnesses, was free to resolve the conflict in favor of the prosecution. *See* ***Brooks***, 323 S.W.3d at 899; ***Jackson***, 443 U.S. at 319, 99 S. Ct. at 2789, 2793.

concurrently with another cause, unless the concurrent cause was clearly sufficient to produce the result and the conduct of the actor clearly insufficient." TEX. PENAL CODE ANN. § 6.04(a) (West 2011). Appellant contends that the State was required to prove that "but for [her] failure to personally call 911, that her duties under section 550.023 had not been satisfied." We interpret this argument to mean, in other words, the State must prove that her failure to provide reasonable assistance caused Willie not to have reasonable assistance.

We are not persuaded that, in order to prove an offense under sections 550.021 and 550.023, section 6.04(a) requires the State to prove the defendant caused a lack of assistance to the injured person. Appellant cites no caselaw supporting this contention. Furthermore, failure to stop and render aid is not a result of conduct offense, but a circumstances surrounding the conduct offense. ***Huffman v. State***, 267 S.W.3d 902, 906 (Tex. Crim. App. 2008). The gravamen of the offense is not a lack of assistance to the injured person, but rather leaving the scene of an accident. ***Id.*** For these reasons, and because nothing in section 550.021 or 550.023 requires that a defendant's conduct caused a particular result, we conclude Appellant's argument here is without merit. Accordingly, we overrule Appellant's third issue.

DISPOSITION

Having overruled Appellant's first, second, and third issues, we ***affirm*** the trial court's judgment.

JAMES T. WORTHEN
Chief Justice

Opinion delivered February 8, 2017.
Panel consisted of Worthen, C.J., Hoyle, J., and Neeley, J.

(DO NOT PUBLISH)

COURT OF APPEALS

TWELFTH COURT OF APPEALS DISTRICT OF TEXAS

JUDGMENT

FEBRUARY 8, 2017

NO. 12-15-00237-CR

APRIL ALLISON POWERS,
Appellant
V.
THE STATE OF TEXAS,
Appellee

Appeal from the 145th District Court
of Nacogdoches County, Texas (Tr.Ct.No. F1421312)

THIS CAUSE came to be heard on the appellate record and briefs filed herein, and the same being considered, it is the opinion of this court that there was no error in the judgment.

It is therefore ORDERED, ADJUDGED and DECREED that the judgment of the court below **be in all things affirmed**, and that this decision be certified to the court below for observance.

James T. Worthen, Chief Justice.
Panel consisted of Worthen, C.J., Hoyle, J., and Neeley, J.