NO. 12-16-00237-CR

IN THE COURT OF APPEALS

TWELFTH COURT OF APPEALS DISTRICT

TYLER, TEXAS

TAMMIE MECHELL LEWIS, APPELLANT	***§***	***APPEAL FROM THE 7TH***
V.	***§***	***JUDICIAL DISTRICT COURT***
THE STATE OF TEXAS, APPELLEE	***§***	***SMITH COUNTY, TEXAS***

MEMORANDUM OPINION

Tammie Mechell Lewis appeals from her conviction for evading arrest or detention with a motor vehicle. In three issues, Appellant challenges two of the trial court's evidentiary rulings and the legal sufficiency of the evidence. We affirm.

BACKGROUND

The State charged Appellant with evading arrest or detention with a motor vehicle, to which she pleaded "not guilty." At trial, Texas State Trooper William Alston testified that he responded to a call regarding a reckless driver. As he attempted to locate the vehicle, Alston received updates from dispatch that the driver, later identified as Appellant, had nearly struck several vehicles, a piece of her vehicle was falling off, and her vehicle was either smoking or on fire. Alston testified that it took fifteen to twenty miles to catch up to Appellant. He first saw smoke coming from the vehicle. Alston testified that Appellant was weaving in her lane, and debris was coming from the vehicle. With his lights and sirens activated, Alston approached the vehicle at approximately sixty miles per hour. When he was directly behind the vehicle, Appellant sped up to over eighty miles per hour and continued driving.

Alston initially told dispatch that he was possibly in pursuit. He was approximately fifty to sixty feet from Appellant. After a half mile or three-quarters of a mile, it became apparent that

Appellant was not slowing down. She continued traveling at an elevated speed and swerving. Alston notified dispatch that he was in pursuit and Appellant had no intention of stopping. He was approximately sixty-five to seventy feet from Appellant because Appellant had accelerated. Other vehicles on the road, including those in front of Alston, reacted to Alston's lights and sirens. After approximately two miles, the vehicle began fishtailing, lost control, and eventually landed in a ditch. He was no more than two and a half to three car lengths, or twenty-five to thirty feet, behind Appellant before the wreck, with the distance fluctuating because of debris from Appellant's vehicle. Alston testified that he was attempting to lawfully detain Appellant, who was operating her vehicle in a manner capable of causing serious bodily injury or death.

Appellant asked Alston, "What's going on?" Alston testified that she appeared surprised by the condition of her vehicle. Alston believed that Appellant was merely acting surprised. He could not understand how a driver could be without a front right tire, while driving on the frame, and be unaware of the damage. He believed a driver should know if the vehicle is in the condition that Appellant's vehicle was in. He believed Appellant knew the condition of her vehicle and he had no doubt that she knew he was behind her and trying to stop her, particularly given that she increased her speed when he moved in behind her. He testified that a person does not evade unless intentionally fleeing. He believed Appellant's speed and reckless driving indicated an intent to evade.

Stephanie Brown testified that she contacted 911 after Appellant made a U-turn directly in front of Brown's vehicle, struck the curb, and damaged Appellant's vehicle. When Brown began to pull over to assist, Appellant "sped off very, very quickly." Brown followed Appellant while on the telephone with 911. The vehicle was smoking, but was still visible. She testified that Appellant was weaving and drove into oncoming traffic, and she felt concerned that a collision might occur. Brown eventually saw Trooper Alston's overhead lights. She believed that Appellant was driving eighty to ninety-five miles per hour during the entire incident.

At the conclusion of trial, the jury found Appellant "guilty" of evading arrest or detention with a motor vehicle and found that Appellant used a deadly weapon during commission of the offense. The jury sentenced Appellant to imprisonment for four years. This appeal followed.

EVIDENTIARY RULINGS

In issue one, Appellant contends that the trial court abused its discretion by sustaining the State's objections to questions asked of Trooper Alston during cross-examination. In issue three, Appellant challenges the admission of a prior conviction.

Standard of Review

We review a trial court's evidentiary rulings for abuse of discretion. ***Oprean v. State***, 201 S.W.3d 724, 726 (Tex. Crim. App. 2006). We must uphold the trial court's ruling if it is reasonably supported by the record and is correct under any theory of law applicable to the case. ***Willover v. State***, 70 S.W.3d 841, 845 (Tex. Crim. App. 2002). We will not reverse unless the trial court's ruling falls outside the "zone of reasonable disagreement." ***Oprean***, 201 S.W.3d at 726.

Cross-Examination

In her first issue, Appellant argues that the trial court abused its discretion by sustaining the State's objections to questions asked by defense counsel during cross-examination of Trooper Alston. Specifically, Appellant refers to the following questions that defense counsel sought to ask Trooper Alston the following questions:

> …under all those circumstances that we saw on the video and the State asked you about yesterday, under all those circumstances, it's possible that she didn't know you were behind her trying to pull her over?
>
> Would you agree with me that if she didn't know you were behind her, trying to pull her over, then she could not intentionally flee from you?
>
> … if it's possible that she didn't know you were behind her, trying to pull her over, then -- I guess what I'm trying to understand from your testimony is, where is the intent, on her part, to flee from you?
>
> Now, would you agree with me, though, that if she were just driving that fast, then that doesn't necessarily mean that she was intending to get away from you?
>
> Would you agree with me then that, for one, that smoke could serve as a distraction or even a barrier to the person driving that vehicle from seeing anybody behind her?
>
> Is it possible that Tammie Lewis, operating this motor vehicle, that she could not see your vehicle behind her because the smoke prevented her from seeing it?

The State objected on grounds of speculation, and the trial court sustained the objections.

On appeal, Appellant argues that Trooper Alston had personal knowledge to answer the above questions. The State contends that Appellant failed to preserve error by neglecting to make an offer of proof. We agree.

To preserve a claim of error regarding the exclusion of evidence, the complaining party must have informed the trial court of the excluded evidence's substance by an offer of proof, unless the substance was apparent from the context. TEX. R. EVID. 103(a)(2). In this case, the record does not demonstrate that Appellant made an offer of proof or otherwise showed what the excluded testimony would have been. "Absent a showing of what such testimony would have been, or an offer of a statement concerning what the excluded evidence would show, nothing is presented for review." ***Guidry v. State***, 9 S.W.3d 133, 153 (Tex. Crim. App. 1999). Accordingly, we overrule Appellant's first issue.

Prior Conviction

In her third issue, Appellant maintains that the trial court abused its discretion by admitting a prior conviction into evidence when, according to Appellant, the exhibit did not contain a fingerprint or other information connecting the judgment and sentence to Appellant.

"To establish that a defendant has been convicted of a prior offense, the State must prove beyond a reasonable doubt that (1) a prior conviction exists, and (2) the defendant is linked to that conviction." ***Flowers v. State***, 220 S.W.3d 919, 921 (Tex. Crim. App. 2007). One way to satisfy this requirement is through documentary evidence that "contains sufficient information to establish both the existence of a prior conviction and the defendant's identity as the person convicted." ***Id***. at 921-22. "The State may use circumstantial evidence to prove the defendant is the same person named in the alleged prior convictions." ***Haas v. State***, 494 S.W.3d 819, 824 (Tex. App.—Houston [14th Dist.] 2016, no pet.).

During trial, when the State sought to admit Exhibit 10 into evidence, defense counsel objected on grounds that there was no sufficient fingerprint to connect the exhibit to Appellant. The trial court overruled the objection.

The record in this case indicates that the State satisfied its burden of linking Appellant to Exhibit 10. According to Exhibit 10, "Tammy Hayter," born April 27, 1969, pleaded guilty to theft by check in December 1997. In May 1998, the trial court revoked her community supervision for committing driving while intoxicated on March 31, 1998. The State also admitted Exhibit 9, which shows that "Tammy Hayter," born April 27, 1969, was charged with

driving while intoxicated on March 31, 1998. Appellant did not object to Exhibit 9. The State's fingerprint expert testified that Exhibit 10 contained a fingerprint that was not of sufficient quality to compare to Appellant's prints. However, the expert compared the prints from Exhibit 9, and other exhibits, to Appellant's prints and discovered that Appellant and "Tammy Hayter" are the same individual. The expert further testified that the driver's license numbers and birth dates are the same.

Under these circumstances, we conclude that the record contains sufficient information establishing Appellant's identity as the person convicted of theft by check in Exhibit 10. *See* ***Flowers***, 220 S.W.3d at 921; *see also* ***Haas***, 494 S.W.3d at 824. Thus, the trial court did not abuse its discretion by admitting Exhibit 10 into evidence at trial. *See* ***Oprean***, 201 S.W.3d at 726. We overrule issue three.

LEGAL SUFFICIENCY

In issue two, Appellant challenges the sufficiency of the evidence to support the jury's verdict. She contends that she did not increase her speed to evade Trooper Alston and that she did not know he was behind her and trying to stop her.

Standard of Review and Applicable Law

When reviewing the sufficiency of the evidence, we determine whether, considering all the evidence in the light most favorable to the verdict, the jury was rationally justified in finding guilt beyond a reasonable doubt. ***Brooks v. State***, 323 S.W.3d 893, 899 (Tex. Crim. App. 2010). The jury is the sole judge of the witnesses' credibility and the weight to be given their testimony. ***Id***. We give deference to the jury's responsibility to fairly resolve evidentiary conflicts, weigh the evidence, and draw reasonable inferences from basic facts to ultimate facts. ***Hooper v. State***, 214 S.W.3d 9, 13 (Tex. Crim. App. 2007). Circumstantial evidence is as probative as direct evidence in establishing the accused's guilt. ***Id***.

A person commits the offense of evading arrest or detention when he intentionally flees from a person he knows is a peace officer attempting to lawfully arrest or detain him. *See* TEX. PENAL CODE ANN. § 38.04(a) (West Supp. 2016). Intent may be inferred from a person's words, actions, and conduct, including factors such as the person's speed, time, distance, and behavior of driving during the pursuit. ***Smith v. State***, 483 S.W.3d 648, 654 (Tex. App.—Houston [14th Dist.] 2015, no pet.); ***State v. Walker***, 195 S.W.3d 293, 300 (Tex. App.—Tyler 2006, no pet.).

Analysis

In this case, the jury heard Trooper Alston testify that, after he activated his lights and siren, Appellant continued accelerating and driving. Although the record contains evidence demonstrating that Appellant drove at excessive speeds even before Alston caught up, the record also contains Alston's testimony that Appellant continued accelerating and driving recklessly after he appeared behind her vehicle. Moreover, the record does not indicate that Appellant attempted to stop in response to Alston's show of authority. As sole judge of the weight and credibility of the evidence, the jury was entitled to reject the theory that Appellant did not know Alston was behind her and attempting to make a traffic stop. *See* ***Hooper***, 214 S.W.3d at 13. This is particularly true in light of evidence that other drivers noticed Alston and responded accordingly, and Alston and Brown testified to visibility despite the smoke from Appellant's vehicle. Additionally, the jury was entitled to reject the theory that Appellant was unaware of the condition of her vehicle, given evidence that she had lost a tire, her vehicle was badly damaged, she was driving on the frame, and smoke was emitting from her vehicle. *See* ***id***. The evidence supports a conclusion that Appellant attempted to get away from a known officer of the law, which is all the statute requires. *See* ***Mayfield v. State***, 219 S.W.3d 538, 541 (Tex. App.—Texarkana 2007, no pet.).

Accordingly, based on Appellant's speed and behavior during the pursuit, the jury could reasonably conclude that Appellant intentionally fled from Trooper Alston, a person she knew to be a peace officer attempting to lawfully arrest or detain her. *See* TEX. PENAL CODE ANN. § 38.04(a); *see also* ***Smith***, 483 S.W.3d at 655. Viewing the evidence in the light most favorable to the verdict, we conclude that the jury was rationally justified in finding, beyond a reasonable doubt, that Appellant committed the offense of evading arrest or detention with a motor vehicle. *See* ***Brooks***, 323 S.W.3d at 899. We overrule issue two.

DISPOSITION

Having overruled Appellant's three issues, we ***affirm*** the trial court's judgment.

JAMES T. WORTHEN
Chief Justice

Opinion delivered June 7, 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

JUNE 7, 2017

NO. 12-16-00237-CR

TAMMIE MECHELL LEWIS,
Appellant
V.
THE STATE OF TEXAS,
Appellee

Appeal from the 7th District Court
of Smith County, Texas (Tr.Ct.No. 007-0276-16)

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.