Affirmed and Opinion filed March 22, 2001.

In The

Fourteenth Court of Appeals

NO. 14-99-01248-CR

CHIP ARDIE, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the County Court at Law No. 2 and Probate Court
Brazoria County, Texas
Trial Court Cause No. 104,744S

O P I N I O N

Appellant was pulled over by a plain-clothed police officer for speeding, and shortly thereafter an altercation ensued. Appellant was charged with resisting arrest. The jury found appellant guilty and sentenced him to one year confinement, 80 hours community service, and fined him $300. On appeal we determine whether: (1) the officer had probable cause to detain and arrest appellant; and (2) the evidence was legally and factually sufficient to support the conviction. We affirm.

Background

On May 24, 1999, Sgt. Todd Arendell of the Alvin Police Department observed the appellant in a Monte Carlo exceeding the speed limit. Arendell was in an unmarked car and not in uniform. He proceeded to follow appellant, reaching speeds of between 70 and 80 miles per hour. Arendell called in the license plate of the car and was told that it belonged to a Buick. Arendell remained in visual contact with the appellant's vehicle until it stopped at a gas station.

Upon reaching the gas station, Arendell approached the vehicle while holding up his badge and identified himself. Arendell asked appellant for his driver's license and told him that he was going to issue him a citation for speeding. Appellant refused to produce his license and Arendell warned him of the possibility of arrest for failure to do so. Appellant still did not produce a driver's license and Arendell placed him under arrest. Upon instructions to move away from the vehicle's door, appellant tried to get back into the vehicle. Arendell took action to prevent appellant from getting back into the vehicle. Appellant then pushed Arendell, hitting him on the hands and torso. Eventually, appellant was subdued and arrested with the aid of another police officer.

Probable Cause

An officer must have probable cause to arrest a defendant without a warrant. *Anderson v. State*, 932 S.W.2d 502, 506 (Tex. Crim. App. 1996). Probable cause for an arrest exists where, at that moment, facts and circumstances within the knowledge of the arresting officer, and of which he has reasonably trustworthy information, would warrant a reasonably prudent person in believing that a particular person has committed or is committing a crime. *Smith v. State*, 739 S.W.2d 848, 851 (Tex. Crim. App. 1987). Finally, an arrest is authorized without a warrant when an offense is committed in an officer's presence or within his view. TEX. CODE CRIM. PROC. art. 14.01(b) (Vernon 1989).

Appellant argues that Arendell did not have probable cause to make an arrest.

Arendell first witnessed appellant speeding. When appellant reached his destination Arendell then approached appellant's vehicle and requested appellant show his driver's license. Appellant failed to comply and was placed under arrest. Failure to produce a valid driver's license is an offense that can lead to detainment. TEX. TRANSP. CODE ANN. § 521.025(b) (Vernon 1996).

The State made an adequate showing there was evidence amounting to probable cause. It is the trial judge who must determine if Arendell's testimony is sufficient evidence of probable cause on a motion to suppress. *Romero v. State*, 800 S.W.2d 539, 543 (Tex. Crim. App. 1990) (citing *Cannon v State*, 691 S.W.2d 664 (Tex. Crim. App. 1985)). We are limited to determining if the trial judge's fact findings are supported by the record. *Id.* If the trial judge's decision is correct on any theory of law applicable to the case it will be sustained. *Id.* Arendell explained the circumstances under which he first saw the appellant. His description in conjunction with the fact that Arendell stayed within sight of the appellant's vehicle provides ample support for the trial judge's finding of probable cause. We find that the trial judge's findings are backed by the trial record and overrule this issue.

Legal Sufficiency

In determining whether the evidence is legally sufficient to support the verdict, we view the evidence "in the light most favorable to the verdict" and ask whether "any rational finder of fact could have found the essential elements of the crime beyond a reasonable doubt." *Weightman v. State*, 975 S.W.2d 621, 624 (Tex. Crim. App. 1998); *Lane v. State*, 933 S.W.2d 504, 507 (Tex. Crim. App. 1996) (citing *Jackson v. Virginia*, 443 U.S. 307, 318-319 (1979)).

We first address appellant's argument that the information misstates the date on which the arrest occurred. The information shows the offense occurred "on or about May 25, 1999," when in fact it occurred on May 24, 1999. The Texas Court of Criminal Appeals has made it clear that it is permissible to allege that a charged offense occurred "on or about"

a particular date. *Garcia v. State*, 981 S.W.2d 683 (Tex. Crim. App. 1998) (holding an indictment need not specify the precise date when the charged offense occurred to satisfy the constitutional notice requirement). As shown in *Garcia*, the date on the information is not there to notify the accused of the date of the offense, but rather to show that the prosecution is not barred by the statute of limitations. *Id.* at 686 (citing *Presley v. State*, 131 S.W. 332, 333 (Tex. Crim. App. 1910).

Appellant also argues that the evidence is not legally sufficient to support the guilty verdict for resisting arrest. The facts show that appellant refused to present his driver's license when the officer asked him to do so. Upon warning of arrest and further failure to cooperate with Arendell's request, Arendell attempted to place appellant under arrest. Appellant resisted by "pushing and hitting" Arendell. We thus hold the jury could have found the essential elements of resisting arrest beyond a reasonable doubt. We overrule appellant's legal sufficiency issue.

Factual Sufficiency

In contrast to a legal sufficiency review, a review of factual significancy requires that the evidence be viewed in a neutral light, favoring neither party. *Johnson v. State*, 23 S.W.3d 1, 7 (Tex. Crim. App. 2000) (citing *Clewis v. State*, 922 S.W.2d 126, 134 (Tex. Crim. App. 1996). Upon examination, the verdict will be set aside only if it is so contrary to the overwhelming weight of the evidence as to be clearly wrong and unjust. *Johnson v. State*, 23 S.W.3d at 7.

Appellant argues that the evidence was factually insufficient to show that he was resisting arrest. At trial, conflicting testimony was given as to the appellant's hair color and the make and model of the car he was driving. When asked what he witnessed, Arendell stated "a dark-colored black what I believed to be a Chevrolet Monte Carlo SS...." He further stated that "it had dark tinted windows and it appeared that the driver had blonde or goldish-colored hair." When Arendell called in to check the registration on the vehicle the

dispatcher told him it was a Buick "registered to Chip Ardie." Appellant, in his testimony, states that he owns a black Buick Regal. He also stated that his hair has never been blonde, but has been black and grey for "probably 25 years."

Appellant, when asked "did you ever see [a badge]," replied that he did not. Appellant states that "it was maybe ten seconds or so" after he had gotten to the gas station that Arendell tried to arrest him. And that "we started a struggle because I didn't know who he was." Appellant denied he had pushed or struck Arendell.

In contradiction to appellant, Arendell testified he approached appellant, holding up his badge saying, "Hi, I am Todd Arendell. I am with the Alvin Police Department. I would like to see your driver's license." Arendell also testified that when he tried to place appellant under arrest, appellant responded by "pushing at me and slapping my hands...."

Though Arendell was mistaken to some degree in his initial description and perception of appellant and his vehicle, he offered a reasonable explanation for his mistake. Further, there was no evidence to meaningfully controvert the fact that Arendell pulled over the correct car and driver. While there was some contradictory testimony concerning what occurred after Arendell pulled over the appellant, we see no reason to set aside the jury's implied determination that Arendell's material testimony was credible and appellant's was not. Appellant has thus failed to show the verdict to be contrary to the overwhelming weight of the evidence as required by *Johnson*. We overrule appellant's factual sufficiency issue.

The judgment of the trial court is affirmed.

/s/ Don Wittig
Justice

Judgment rendered and Opinion filed March 22, 2001.

Panel consists of Justices Yates, Wittig, and Frost.

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