

Affirmed and Opinion filed October 5, 2000.



In The

Fourteenth Court of Appeals

NO. 14-99-00661-CR

RODRICK EUGENE KNAPP, Appellant

V.

THE STATE OF TEXAS, Appellee

**On Appeal from the 182nd District Court
Harris County, Texas
Trial Court Cause No. 797975**

OPINION

A jury convicted appellant, Rodrick Eugene Knapp, of the state jail felony offense of evading arrest. *See* TEX. PEN. CODE ANN. § 38.04 (Vernon 1994 & Supp.1999). The offense of evading arrest is a state jail felony when the actor uses a vehicle while in flight and has previously been convicted of this offense. *See* TEX. PEN. CODE ANN. § 38.04(b)(2). In his sole point of error, appellant contends the trial court lacked jurisdiction because an element of the offense, the prior conviction, occurred before the effective date of the above statute. We affirm.

On April 7, 1992, appellant was convicted of the misdemeanor offense of evading arrest. On November 13, 1998, appellant again fled from a peace officer and was charged with the state jail felony

offense of evading arrest under section 38.04(b)(2) of the Texas Penal Code. The statute under which he was indicted states:

- (a) A person commits an offense if he intentionally flees from a person he knows is a peace officer attempting lawfully to arrest or detain him.
- (b) An offense under this section is a class B misdemeanor, except that the offense is:

* * *

(2) a state jail felony if the actor uses a vehicle while the actor is in flight and the actor has been previously convicted under this section;

TEX. PEN. CODE ANN. § 38.04. The relevant portion of this statute became effective September 1, 1995. Appellant was convicted by a jury and sentenced to seven months in a state jail facility.

The amendment to section 38.04 was made pursuant to Senate Bill 281 which contained the following savings clause:

- (a) The change in law made by this Act applies only to an offense committed on or after the effective date of this Act. For purposes of this section, an offense is committed before the effective date of this Act if any element of the offense occurs before the effective date.
- (b) An offense committed before the effective date of this Act is covered by the law in effect when the offense was committed, and the former law is continued in effect for that purpose.

Act of June 15, 1995, 74th Leg., R.S., ch. 708, § 4, sec. 38.04, 1995 Tex. Gen. Laws 3745. Citing the above savings clause, appellant contends an element of the offense, i.e., the prior conviction, occurred prior to the effective date of the act, thus barring application of section 38.04(b)(2) to appellant and rendering the district court without jurisdiction to hear the cause.

Appellant's brief is replete with authority establishing that his prior conviction is a jurisdictional element of the offense. However, because the jurisdictional element at issue is appellant's *status* as a prior offender, not the *date* of his prior conviction, the Court of Criminal Appeals has specifically rejected the contention made here. *See State v. Mason*, 980 S.W.2d 635, 638-41 (Tex. Crim. App. 1998). In *Mason*, the defendant asserted that the statute with which he was charged was not applicable because his prior felony conviction was an essential element of the crime and his conviction occurred prior to the effective date of the statute. *See id.* at 637. The court dismissed the argument and concluded that the

date of the prior conviction was not an element of the offense. *See id.* at 640.¹ The court reasoned that any other interpretation of the statute would lead to an absurd result. *See id.* at 638.

The Court of Criminal Appeal's rationale in *Mason* is fully applicable to appellant's argument. It is appellant's status as someone previously convicted of violating section 38.04 that is an element of the offense, not the date upon which the prior conviction occurred. Only individuals who have a prior conviction, and use a vehicle while in flight from a peace officer, are subject to prosecution under section 38.04(b)(2). Appellant satisfied both of these elements on November 13, 1998, more than three years after the effective date of the statute. Accordingly, appellant's sole point of error is overruled.

The judgment of the trial court is affirmed.

/s/ J. Harvey Hudson
Justice

Judgment rendered and Opinion filed October 5, 2000.

Panel consists of Chief Justice Murphy and Justices Amidei and Hudson.

Do Not Publish — TEX. R. APP. P. 47.3(b).

¹ *See also Cannady v. State*, 11 S.W.3d 205, 208 (Tex. Crim. App. 2000)(adopting the reasoning of the Thirteenth Court of Appeals and holding that the date of the prior conviction was simply not an element of the charged offense); *Sheppard v. State*, 5 S.W.3d 338, 340 (Tex. App.—Texarkana 1999, no pet.); *Sparkman v. State*, 997 S.W.2d 660, 669 (Tex. App.—Texarkana 1999, no pet.).