APPENDIX A
COURT OF APPEALS
SECOND DISTRICT OF TEXAS
FORT WORTH, TEXAS

NO. 02-17-00012-CR

LONNIE CHARLES WILLIAMS, III.,

Appellant,

v.

THE STATE OF TEXAS,

Appellee.

From County Criminal Court No. 1 of Denton County
Trial Court No. CR-2016-07798-C

MEMORANDUM OPINION[1]

Lonnie Charles Williams III appeals his conviction for driving while intoxicated (DWI). *See* Tex. Penal Code Ann. § 49.04 (West Supp. 2017). In four issues, Williams argues that (1) the trial court erred by determining that the law enforcement officer who stopped him had reasonable suspicion to detain and probable cause to arrest him, (2) as a result, the trial court erred by denying his motion to suppress, (3) the trial court erred by admitting a 911 recording into evidence at the motion to suppress hearing and at

[1] *See* Tex. R. App. P. 47.4.

trial, and (4) even if the officer's detainment and arrest of Williams did not violate the United States Constitution, they nevertheless violated the Texas constitution because Article I, section 9 of the Texas constitution affords greater protections than the Fourth Amendment. Because we conclude that the trial court did not abuse its discretion by denying the motion to suppress because the officer had reasonable suspicion to detain and probable cause to arrest Williams under both the United States Constitution and the Texas constitution, and because the 911 recording was admissible under the present-sense-impression exception to the hearsay rule, we affirm the trial court's judgment.

BACKGROUND FACTS

Kristopher Laney was driving to his mother's house around 8:30 a.m. one morning when another driver in a maroon Altima nearly "clipped" Laney's car, pulling out in front of him without any notice or turn signal. The driver veered into the oncoming traffic lane almost into a ditch and then veered back; he did this "a few times." Laney agreed the driving was erratic and described it as reckless. Laney tried to catch the driver's attention by honking while the two were stopped at a red light, but the driver made a rude gesture at Laney out of the car's moonroof and then drove through the red light. Although Laney stayed stopped at the red light until it turned green, he could still see the car. Laney saw the driver of the car run a stop sign before driving over a hill and out of Laney's sight. After Laney crested the hill, he could see the car again, but he could not maintain "100 percent visual contact."

While following the car, Laney called 911 and told the dispatcher the car's description and license plate, as well as his own name and phone number. Laney also told the dispatcher that a reckless driver was driving head-on towards other cars, had run through a stop sign, was driving about sixty miles per hour, and appeared to be drunk. As Laney was talking to the dispatcher, he noticed that the same driver had "crashed [the car] into a curb, buckled its tire, and was [at] a dead stop at the RaceTrac on Mayhill and 380." Laney told the dispatcher that the driver had "wrecked out" at a parking lot of a RaceTrac. Laney pulled into the gas station and waited until Denton police arrived. While at the gas station, he saw the driver talking to a person "who had claimed to be a witness to what had happened at the RaceTrac," and he saw a passenger pouring out a cup of what Laney thought was alcohol, which he also told the dispatcher.

Around the same time, Williams called 911 and reported that he had almost been hit by another car. Dispatch did not report this call to the officers responding to Laney's call. Denton police officer Marida Buchanan arrived at the gas station first and began to investigate Laney's report of a reckless driver.

When Buchanan arrived at the RaceTrac, she saw a car matching the description Laney gave to dispatch; the car was not parked in a parking space but was in the entrance area of the RaceTrac. Buchanan noticed that the car's left front wheel was "damaged pretty badly" and that the car did not appear to be drivable. She thought the damage appeared to be consistent with the information she had received that the car had hit a curb. A person was in the car on the passenger

side, and a man she identified as Williams, whom she thought was the driver, was standing outside the car. Although Buchanan neither perceived Williams to be drunk nor smelled any alcohol on him, she did perceive him to be worried about the accident, and she noticed that his eyes were red and "glossy" or watery and that his speech was slurred. When Buchanan asked Williams if he had drunk any alcohol, he said no.

While Buchanan was talking to Williams, Denton police officer Samy Sabogal-Sanchez interviewed Laney, Williams's passenger, and another person who claimed to have seen the accident. Based on Laney's statement to Sabogal-Sanchez and the information she had received from dispatch, Buchanan decided to conduct standardized field sobriety tests (SFST) on Williams.

According to Buchanan's testimony at the suppression hearing, Williams exhibited six out of six clues for the horizontal gaze nystagmus test, five out of eight clues for the walk-and-turn test, and two out of four clues for the one-leg stand test. Buchanan therefore concluded that Williams was intoxicated and decided to arrest him for DWI. When Buchanan asked Williams again whether he had consumed any alcohol, he said he had drunk two glasses of wine that morning. After Buchanan arrested him, Williams consented to a breath alcohol test, which showed that he had a blood alcohol concentration of between 0.229 and 0.231. The State charged Williams with driving while having an alcohol concentration equal to or greater than 0.15.

Before trial, Williams filed a motion to suppress all evidence obtained after Buchanan initially

detained him, alleging primarily that Buchanan had detained him without reasonable suspicion and arrested him without probable cause. Laney did not testify at the suppression hearing. Both officers and the 911 dispatcher testified for the State, and an expert witness testified on Williams's behalf. Based on his review of video recordings of Buchanan's interview of Williams, the expert testified that Williams's eyes were not red and watery and that Buchanan made some significant mistakes while conducting the SFSTs. He opined that Williams did not display any signs of intoxication at the scene and that Buchanan lacked probable cause to arrest Williams. Nevertheless, the trial judge denied the motion to suppress, stating that there was enough information from the 911 call alone to give Buchanan reasonable suspicion to investigate Williams for possible DWI and sufficient probable cause to arrest him.

The trial judge made the following findings of fact and conclusions of law in support of the ruling:

1. On May 14, 2016, the Defendant was driving a motor vehicle in Denton County, Texas.
2. The Lewisville Police Department received a 911 call from Kristopoher [*sic*] Laney. He describes the defendant as a reckless driver; driving towards cars; out of control; about to hit another car head on; ran through a stop sign; going 60mph; out of his mind drunk; car jumped curb and vehicle became disabled; and once stopped a female poured out what the caller thought to be alcohol. The Court along with responding officers found the 911 caller to be very credible.

3. Officer Marida Buchanan was dispatched to the scene. Officer Buchanan found the defendant's vehicle to be badly damaged and not parked in a parking spot. She saw defendant standing by the vehicle. Buchanan thought the defendant might be intoxicated. Buchanan knew the defendant had violated criminal offenses: speeding, driving into oncoming traffic and running a stop sign.
4. The driver admitted he was the driver of the vehicle.
5. The Court finds that Officer Buchanan had reasonable suspicion to stop and detain defendant for speeding, reckless driving, running a stop sign and suspicion of driving while intoxicated.
6. Officer Buchanan did further investigate for DWI and noticed; eyes were glossy, red and watery; slurred speech; driver was worried; driver failed HGN, walk and turn, and one leg stand field sobriety tests. Officer Buchanan determined these all to be indicators of intoxication together with the factors relayed by the 911 caller.
7. Defendant admitted to drinking alcohol.
8. The Court finds that Officer Buchanan had probable cause to arrest the defendant for DWI.

. . . .

10. Court finds that Officer Buchanan and Officer Sanchez to be credible witnesses.

A jury unanimously found Williams guilty of DWI and assessed his sentence at 365 days' confinement with a $4,000 fine. The trial judge sentenced Williams in accordance with the jury's assessment, and Williams appealed.

TRIAL COURT DID NOT ABUSE ITS DISCRETION BY DENYING MOTION TO SUPPRESS

In his first two issues, Williams contends that the trial court abused its discretion by concluding that Buchanan had reasonable suspicion to detain and probable cause to arrest him and by denying his motion to suppress.

STANDARD OF REVIEW

We review a trial court's ruling on a motion to suppress evidence under a bifurcated standard of review. *Amador v. State*, 221 S.W.3d 666, 673 (Tex. Crim. App. 2007); *Guzman v. State*, 955 S.W.2d 85, 89 (Tex. Crim. App. 1997). In reviewing the trial court's decision, we do not engage in our own factual review. *Romero v. State*, 800 S.W.2d 539, 543 (Tex. Crim. App. 1990); *Best v. State*, 118 S.W.3d 857, 861 (Tex. App.—Fort Worth 2003, no pet.). The trial judge is the sole trier of fact and judge of the credibility of the witnesses and the weight to be given their testimony. *Wiede v. State*, 214 S.W.3d 17, 24.25 (Tex. Crim. App. 2007).

Therefore, we give almost total deference to the trial court's rulings on (1) questions of historical fact, even if the trial court's determination of those facts was not based on an evaluation of credibility and demeanor, and (2) application-of-law-to-fact questions that turn on an evaluation of credibility and demeanor. *Amador*, 221 S.W.3d at 673; *Montanez v. State*, 195 S.W.3d 101, 108-09 (Tex. Crim. App. 2006); *Johnson v. State*, 68 S.W.3d 644, 652-53 (Tex. Crim. App. 2002). But when application-of-law-to-fact questions do not turn on the credibility and demeanor of the witnesses, we review the trial court's rulings on

those questions de novo. *Amador*, 221 S.W.3d at 673; *Estrada v. State*, 154 S.W.3d 604, 607 (Tex. Crim. App. 2005); *Johnson*, 68 S.W.3d at 652-53.

APPLICABLE LAW ON REASONABLE SUSPICION AND PROBABLE CAUSE

The Fourth Amendment protects against unreasonable searches and seizures by government officials. U.S. Const. amend. IV; *Wiede*, 214 S.W.3d at 24. To suppress evidence because of an alleged Fourth Amendment violation, the defendant bears the initial burden of producing evidence that rebuts the presumption of proper police conduct. *Amador*, 221 S.W.3d at 672; *see Young v. State*, 283 S.W.3d 854, 872 (Tex. Crim. App.), *cert. denied*, 558 U.S. 1093 (2009). A defendant satisfies this burden by establishing that a search or seizure occurred without a warrant. *Amador*, 221 S.W.3d at 672. Once the defendant has made this showing, the burden of proof shifts to the State, which is then required to establish that the search or seizure was conducted pursuant to a warrant or was reasonable. *Id.* at 672-73; *Torres v. State*, 182 S.W.3d 899, 902 (Tex. Crim. App. 2005); *Ford v. State*, 158 S.W.3d 488, 492 (Tex. Crim. App. 2005).

A detention, as opposed to an arrest, may be justified on less than probable cause if a person is reasonably suspected of criminal activity based on specific, articulable facts. *Terry v. Ohio*, 392 U.S. 1, 21, 88 S.Ct. 1868, 1880 (1968); *Carmouche v. State*, 10 S.W.3d 323, 328 (Tex. Crim. App. 2000). An officer conducts a lawful temporary detention when he or she has reasonable suspicion to believe that an individual is violating the law. *Crain v. State*, 315 S.W.3d 43, 52 (Tex. Crim. App. 2010); *Ford*, 158 S.W.3d at 492.

Reasonable suspicion exists when, based on the totality of the circumstances, the officer has specific, articulable facts that when combined with rational inferences from those facts, would lead him to reasonably conclude that a particular person is, has been, or soon will be engaged in criminal activity. *Ford*, 158 S.W.3d at 492. This is an objective standard that disregards any subjective intent of the officer making the stop and looks solely to whether an objective basis for the stop exists. *Id.*

"The scope of the detention must be carefully tailored to its underlying justification." *Arthur v. State*, 216 S.W.3d 50, 55 (Tex. App.—Fort Worth 2007, no pet.) (citing *Florida v. Royer*, 460 U.S. 491, 500, 103 S.Ct. 1319, 1325 (1983)). A police officer, for instance, may not require a person "to undergo field sobriety tests without reasonable suspicion that the person has committed an intoxication offense." *State v. Rudd*, 255 S.W.3d 293, 298-99 (Tex. App.—Waco 2008, pet. ref'd); *see Arthur*, 216 S.W.3d at 55.

Under the Fourth Amendment, a warrantless arrest is unreasonable per se unless it fits into one of a "few specifically established and well delineated exceptions." *Minnesota v. Dickerson*, 508 U.S. 366, 372, 113 S.Ct. 2130, 2135 (1993); *Torres*, 182 S.W.3d at 901. A police officer may arrest an individual without a warrant only if probable cause exists with respect to the individual in question and the arrest falls within one of the exceptions set out in the code of criminal procedure. *Torres*, 182 S.W.3d at 901; *see* Tex. Code Crim. Proc. Ann. arts. 14.01-.04 (West 2015 & Supp. 2017).

Probable cause for a warrantless arrest requires that the officer have a reasonable belief that, based on

facts and circumstances within the officer's personal knowledge, or of which the officer has reasonably trustworthy information, an offense has been committed. *Torres*, 182 S.W.3d at 901-02. Probable cause must be based on specific, articulable facts rather than the officer's mere opinion. *Id.* at 902. We use the "totality of the circumstances" test to determine whether probable cause existed for a warrantless arrest. *Id.*

BUCHANAN HAD REASONABLE SUSPICION TO DETAIN WILLIAMS FOR DWI

Williams argues that Buchanan lacked reasonable suspicion to investigate him for possible DWI because she failed to corroborate the information from Laney's 911 call and because she did not personally observe Williams engaging in any illegal activity or any activity that would permit an inference of illegal activity. Furthermore, Williams contends that even if Buchanan had reasonable suspicion before performing SFSTs, she exceeded the scope of her reasonable suspicion by performing the SFSTs because by that point two witnesses had corroborated Williams's version of the facts, which along with the lack of any smell of alcohol emanating from Williams and his denial of drinking alcohol should have dispelled all reasonable suspicion.

A law enforcement officer may rely on a citizen informant instead of on the officer's own personal observation to form the requisite suspicion if the informant is reliable and the officer can corroborate the information supplied by the informant. *See Brother v. State*, 166 S.W.3d 255, 257-58 (Tex. Crim. App. 2005); *Turley v. State*, 242 S.W.3d 178, 181 (Tex. App.—Fort Worth 2007, no pet.). The reliability of an

informant "is generally shown by the very nature of the circumstances under which the incriminating information became known to him or her." *Brother*, 166 S.W.3d at 258. "The most reliable form of a citizen tip is information given to the officer by a 'face-to-face informant who has no other contact with the police beyond witnessing a criminal act.'" *Taflinger v. State*, 414 S.W.3d 881, 885 (Tex. App.—Houston [1st Dist.] 2013, no pet.) (op. on reh'g) (quoting *State v. Griffey*, 241 S.W.3d 700, 704-05 (Tex. App.—Austin 2007, pet. ref'd)).

"Corroboration means that the officer confirms enough facts to conclude reasonably, in light of the circumstances, that the information provided is reliable and a detention is justified." *Turley*, 242 S.W.3d at 181 (citing *Brother*, 166 S.W.3d at 259 n.5). Additionally, "the cumulative information known to the cooperating officers . . . is to be considered in determining whether reasonable suspicion exists." *Hoag v. State*, 728 S.W.2d 375, 380 (Tex. Crim. App. 1987). "A 911 police dispatcher is ordinarily regarded as a 'cooperating officer' for purposes of making this determination." *Derichsweiler v. State*, 348 S.W.3d 906, 914 (Tex. Crim. App. 2011), *cert. denied*, 565 U.S. 840 (2011).

Applying the settled standard of review, we conclude that Buchanan received enough information from Laney that she was able to corroborate at the scene of the accident to furnish her with reasonable suspicion to investigate Williams for DWI. Laney established himself as a reliable witness by fully identifying himself to the 911 operator, who was a cooperating officer for the purposes of Buchanan's

investigative detention of Williams. *See id.*[2] Laney described to the dispatcher specific ways in which the driver of the car he was following was behaving unusually—pulling out in front of him without warning, driving into the oncoming lane and almost into a ditch on the other side several times, driving head-on towards other cars, driving "out of control," speeding, stopping at a red light and then driving through before the light turned green, and running a stop sign. Laney provided a description of both the car and its occupants. Laney informed the dispatcher that the driver had wrecked his car and pulled off into the entrance of the RaceTrac near Highway 380 and Mayhill. Finally, Laney stayed at the scene and gave a statement about what he had seen to Sabogal-Sanchez.

When Buchanan arrived at the RaceTrac near Highway 380 and Mayhill, she was able to corroborate the description of the car, its location, its occupants, and that it had damage consistent with hitting a curb. She also observed that Williams, who besides appearing worried, also had red, watery eyes and slurred speech. Buchanan need not have personally observed Williams engaging in illegal activity or activity that would permit an inference of illegal activity. *Brother*, 166 S.W.3d at 257.[3] The

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[2] Therefore, the anonymous-tipster cases Williams cites are inapposite. *See Florida v. J.L.*, 529 U.S. 266, 268, 272, 120 S.Ct. 1375, 1377, 1379 (2000); *Davis v. State*, 989 S.W.2d 859, 865 (Tex. App.—Austin 1999, pet. ref'd) (holding that officer lacked reasonable suspicion because the informant was anonymous and the officer could not corroborate the criminal activity); *Stewart v. State*, 22 S.W.3d 646, 650 (Tex. App.-Austin 2000, pet. ref'd) (same).

[3] Williams cites two cases to support his argument that even if an officer relies on information from a reliable, identified

information Laney relayed to the 911 dispatcher and Sabogal-Sanchez, along with Buchanan's observations at the RaceTrac, provided specific, articulable facts sufficient to establish her reasonable suspicion to investigate Williams for DWI. *See id.*; *Pipkin v. State*, 114 S.W.3d 649, 655-56 (Tex. App.—Fort Worth 2003, no pet.).

CONTINUED DETENTION

Williams also contends that even if Buchanan had reasonable suspicion at any time prior to conducting the SFSTs, all suspicion was dispelled when (1) two witnesses corroborated Williams's version of the facts—that he had swerved to avoid an accident, (2) Williams denied drinking any alcohol or using any drugs, (3) Williams did not appear to be intoxicated, and (4) Buchanan failed to detect any odor of alcohol or see any drug or alcohol contraband.

"Reasonable suspicion is not a carte blanche for a prolonged detention and investigation." *Matthews v. State*, 431 S.W.3d 596, 603 (Tex. Crim. App. 2014). Instead, "an investigative detention must be temporary and last no longer than is necessary to effectuate the purpose of the stop." *Royer*, 460 U.S. at 500, 103 S.Ct. at 1325. Thus, after an investigatory detention has begun, "[a]n officer must act to confirm

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informant, she must also have personally observed the same type of driving behavior that the informant saw to have reasonable suspicion. *See Bilyeu v. State*, 136 S.W.3d 691, 695-97 (Tex. App.—Texarkana 2004, no pet.); *State v. Adkins*, 829 S.W.2d 900, 901-02 (Tex. App.—Fort Worth 1992, pet. ref'd). But neither case helps Williams here because both acknowledge that an officer need not personally observe the behavior giving rise to the inference that criminal activity has occurred. *See Bilyeu*, 136 S.W.3d at 697; *Adkins*, 829 S.W.2d at 901.

or dispel his suspicions quickly." *Matthews*, 431 S.W.3d at 603.

Williams compares his case with *Davis v. State*, wherein officers stopped the defendant at 1:00 a.m. for suspicion of DWI. 947 S.W.2d 240, 241 (Tex. Crim. App. 1997). The defendant got out of his vehicle, approached the officers, and informed them that he was not intoxicated, but merely tired. *Id.* Not detecting an odor of alcohol emanating from either the defendant or his vehicle, the officers determined that he was not intoxicated. *Id.* Nevertheless, the officers continued to detain the defendant and his vehicle without any articulable facts to support the continued detention, eventually finding with the help of a narcotics dog a suitcase containing marijuana in the trunk. *Id.* The court held that the officers' reasonable suspicion was dispelled by the defendant's explanation of being tired and the lack of an odor of alcohol. *Id.* at 245.

If Williams's facts were taken in isolation—his version of events corroborated by his passenger and a third-party witness, the lack of odor emanating from either Williams or his vehicle, and the failure to find any alcohol or alcohol-or drug-related contraband—then Williams may have been able to dispel Buchanan's reasonable suspicion. *Cf. id.* However, the totality of the circumstances supports Buchanan's suspicion. Unlike the officer in *Davis*, Buchanan was not relying merely upon an observation of unusual behavior, but also on an informant who fully identified himself and remained on the scene for further questioning. Despite Williams's repeated claims that Buchanan had determined that Williams was not intoxicated, she merely stated that he did not seem

intoxicated upon her initial meeting with him but that he also seemed worried and had red, glossy eyes and slurred speech. Nor was she required to rely only on the witnesses/ statements supporting Williams's version of the facts—she could have and apparently did determine that Laney was a more credible witness. This case, therefore, can be distinguished from *Davis* because Buchanan had sufficient corroborating evidence to continue with her detention of Williams and to perform SFSTs to further investigate whether Williams was intoxicated. *Cf. Turley*, 242 S.W.3d at 181. Therefore, we conclude that Buchanan retained reasonable suspicion to justify her performance of the SFSTs on Williams.

PROBABLE CAUSE TO ARREST

Williams further argues that Buchanan did not have probable cause to arrest him for DWI because she detected no odor of alcohol emanating from Williams or his vehicle and because she failed to conduct the SFSTs correctly. Williams contends that the only basis for his arrest is Laney's accusation he was driving recklessly, which is insufficient to establish probable cause.

To substantiate his argument that Buchanan significantly deviated from the proper procedure in administering the SFSTs, Williams offered the testimony of Daryl Parker, a former police officer now employed as a private investigator. But the prosecutor effectively cross-examined Parker about why his criticisms of Buchanan's technique would not necessarily have affected the results. In its findings and conclusions, the trial court noted that along with

Laney's 911 call, the following facts were sufficient to give Buchanan probable cause to arrest Williams: Williams's red and glossy eyes, slurred speech, worried demeanor, failure of the three SFSTs, and—after initially denying having drunk alcohol—his admission that he had drunk two glasses of wine. We agree that considering the totality of the circumstances—not certain facts in isolation as Williams urges us to do—that Buchanan had probable cause to arrest Williams. See *Wiede*, 214 S.W.3d at 25 & n. 37.

Having concluded that the trial court did not abuse its discretion by determining that Buchanan had reasonable suspicion to detain Williams to investigate DWI and perform SFSTs, and that she also had probable cause to arrest Williams, we overrule Williams's first two issues.

ARGUMENT THAT ARTICLE I, SECTION 9 OF THE TEXAS CONSTITUTION AFFORDS GREATER PROTECTION THAN THE UNITED STATES CONSTITUTION NOT PRESERVED

In his fourth issue, Williams contends that Article I, section 9 of the Texas constitution affords citizens greater protection from unreasonable detentions, arrests, and searches than the Fourth Amendment to the United States Constitution. Although Williams complained in his written motion to suppress that the Denton police department violated his rights under both the Fourth Amendment and Article I, section 9 of the Texas constitution, he did not argue in the motion, at the suppression hearing or trial, or in any post-trial motion that the Texas constitution affords him

greater rights than the United States Constitution in this particular case. See *Johnson v. State*, 912 S.W.2d 227, 234 (Tex. Crim. App. 1995). Therefore, we hold that Williams failed to preserve this complaint for review. See. Tex. R. App. P. 33.1(a)(a)(A); *Pena v. State*, 285 S.W.3d 459, 464-65 (Tex. Crim. App. 2009); *Shipp v. State*, No 05-16-01347-CR, 2017 WL 4586136, at *3-4 (Tex. App.—Dallas Oct. 16, 2017, no pet.) (mem. op., not designated for publication). We overrule Williams's fourth issue.

LANEY'S 911 CALL ADMISSIBLE AT TRIAL

In his third issue, Williams contends that the trial court erred by overruling his hearsay objections to the admission of Laney's 911 call both at the motion to suppress hearing and at trial. Williams argues that Laney's information in the call lacked trustworthiness because Williams's own call explaining that he wrecked by the RaceTrac after another car almost it him contradicted Laney's account and because at trial the State failed to establish all of the other criteria for the business-record exception to the hearsay rul. See Tex. R. Evid. 806(6). Williams also argues that admission of the 911 call materially prejudiced him.

Williams did not argue at the suppression hearing that his subsequent 911 call showed that all of the information Laney relayed to the dispatcher lacked trustworthiness. When the State offered the recording into evidence at the suppression hearing during the 911 dispatcher's testimony, Williams state, "No objection." After the trial court admitted the recording into evidence, and the State had published it and questioned the dispatcher, Williams objected

during his cross-examination: "We'd like to object to the recording based on hearsay…There's an out of party—or a declarant that's outside the court, who's not testifying currently, and those statements should not be admissible here in this hearing." The State responded that the dispatcher authenticated the recording, that it was nontestimonial, and that "it's an exception to hearsay." The trial court overruled the objection without stating a reason. Williams's objection—coming well after the trial court had already admitted and listened to the recording—was too late to preserve his complaint about the admission of hearsay. See Tex. R. App. P. 33.1(a)(1)(A); *Wilson v. State*, 7 S.W.3d 136, 146 (Tex. Crim. App. 1999) (stating that although "subsequent events may cause a ground for complaint to become more apparent, that fact does not render timely an otherwise untimely complaint").

At trial, the State offered the 911 call during Laney's testimony. Williams took Laney on voir dire and questioned him about whether he was able to see Williams's car at the moment he called the dispatcher or whether he was simply relaying events to the dispatcher that he had seen previously. After Laney said he did tell the dispatcher about things he had seen previously, Williams objected to "hearsay"; the trial court summarily overruled the objection and admitted the recording.

Assuming that Williams's general hearsay objection was sufficient to encompass his argument on appeal that the State did not prove the applicability of the business records exception to the hearsay rule, see

Tex. R. Evid. 803(6), we nevertheless conclude that the trial court did not abuse its discretion by admitting the recording because it was admissible as a present sense impression, see Tex. R. Evid. 803(1). This exception is premised on the idea that "the contemporaneity of the event and the declaration ensures reliability of the statement." *Brooks v. State*, 990 S.W.2d 278, 287 (Tex. Crim. App. 1999). "The closer the declaration is to the event the less likely there will be a calculated misstatement." *Id.*

Laney said during Williams's voir dire that there were moments during the call when William's car was out of his sight. During the call, he told the dispatcher that he had been following the car for about two or three miles, that he was nearing Highway 380, and that the driver had "just run through a stop sign." After reviewing Laney's testimony and the 911 call, we conclude that his statements in the 911 call were all either contemporaneous with his impressions of Williams's driving or made nearly immediately after the events so that the call was admissible at trial under the present sense impression exception to the hearsay rule. Therefore, Williams's arguments that the State did not prove the business records exception to the hearsay rule are unavailing.

Finally, to the extent Williams argues on appeal that the recording was substantially more prejudicial than probative under rule 403, he did not preserve such a complaint at trial. See Tex. R. App. P. 33.2(a)(1)(A). Accordingly, we overrule Williams's third issue.

CONCLUSION

Having overruled William's four issues, we affirm the trial court's judgment.

s/

Charles Bleil

Justice

PANEL: Walker and Pittman, JJ.; Charles Bleil (Senior Justice, Retired, Sitting by Assignment).

DELIVERED: January 25, 2018.

APPENDIX B

COURT OF APPEALS

SECOND DISTRICT OF TEXAS

FORT WORTH, TEXAS

NO. 02-17-00012-CR

LONNIE CHARLES WILLIAMS, III.,

v.

THE STATE OF TEXAS,

From County Criminal Court No. 1

of Denton County(CR-2016-07798-C)

January 25, 2018

Opinion by Justice Bleil (nfp)

JUDGMENT

This court has considered the record on appeal in this case and holds that there was no error in the trial court's judgment. It is ordered that the judgment of the trial court is affirmed.

SECOND COURT OF APPEALS

By s/

Justice Charles Bliel

APPENDIX C

COURT OF APPEALS

SECOND DISTRICT OF TEXAS

FORT WORTH

NO. 02-17-00012-CR

LONNIE CHARLES WILLIAMS, III APPELLANT

V.

THE STATE OF TEXAS STATE

FROM THE COUNTY CRIMINAL COURT NO. 1
OF DENTON COUNTY

TRIAL COURT NO. CR-2016-07798-C

ORDER

We have considered "Appellant's Motion For Rehearing."

It is the opinion of the court that the motion for rehearing should be and is hereby denied and that the opinion and judgment of January 25, 2018 stand unchanged.

The clerk of this court is directed to transmit a copy of this order to the attorneys of record.

SIGNED April 19, 2018

s/

CHARLES BLEIL

JUSTICE

PANEL: Walker, and Pittman, JJ.,; Charles Bleil (Senior Justice, Retired, Sitting by Assignment).

APPENDIX D

OFFICIAL NOTICE FROM COURT OF CRIMINAL APPEALS OF TEXAS

P.O. BOX 12308, CAPITOL STATION, AUSTIN, TEXAS 78711

8/22/2018

COA NO. 02-17-00012-CR

WILLIAMS, LONNIE CHARLES III

TR. CT. NO. CR-2016-07798-C

PD-0503-18

On this day, the Appellant's petition for discretionary review has been refused.

Deana Williamson, Clerk

2ND COURT OF APPEALS CLERK
DEBRA SPISAK
401 W. BELKNAP, STE 9000
FORT WORTH, TX 76196
DELIVERED VIA E-MAIL

APPENDIX E

IN THE COUNTY CRIMINAL COURT AT LAW NUMBER 1

DENTON COUNTY, TEXAS

NO. CR-2016-09707-A

NO. CR-2016-07798-C

STATE OF TEXAS

VS.

LONNIE WILLIAMS

MOTION TO SUPPRESS

TO THE HONORABLE JUDGE 0F SAID COURT:

Now comes Lonnie Williams, Defendant, and files this Motion to Suppress and shows the following:

1. Defendant has been charged with the offense of Driving while intoxicated >= .15 and violation of a protective order.

2. The actions of the Denton Police Department violated the constitutional and statutory rights of the Defendant under the Fourth, Fifth, Sixth and Fourteenth Amendments to the United States Constitution, Article 1, Section 9 of the Texas Constitution, and under Article 3823 of the Texas Code of Criminal Procedure.

3. Lonnie Williams was arrested without lawful warrant, probable cause or other lawful authority in violation of the rights of Lonnie Williams pursuant to the Fourth, Fifth, Sixth, and Fourteenth Amendments to the United States Constitution, Article 1, Sections 9, 10 and 19 of the Constitution of the State of Texas.

4. Any statements obtained from Lonnie Williams were obtained in violation of Article 38.22 of the Texas Code of Criminal Procedure and in violation of the rights of Lonnie Williams pursuant to the Fourth, Fifth, Sixth, and Fourteenth Amendments to the United States Constitution, Article 1, Sections 9, 10 and 19 of the Constitution of the State of Texas.

5. Any tangible evidence seized in connection with this case, including but not limited to a Saiga .223 Assault Rifle SN H06164732, was seized Without warrant, probable cause or other lawful authority in violation of the rights of Lonnie Williams pursuant to the Fourth, Fifth, Sixth, and Fourteenth Amendments to the United States Constitution, Article 1, Sections 9, 10 and 19 of the Constitution of the State of Texas.

6. Therefore, Defendant requests that the following matters be suppressed at trial of this cause:

a. Any and all tangible evidence seized by law enforcement officers or others in connection with the detention and arrest of Lonnie Williams in this case or in connection with the investigation of this case, including but not limited to Saiga .223 Assault Rifle SN H06164732, and any testimony by the Denton

Police Department or any other law enforcement officers or others concerning such evidence.

b. The arrest of Lonnie Williams at the time and place in question and any and all evidence which relates to the arrest, and any testimony by the Denton Police Department or any other law enforcement officers or others concerning any action of Lonnie Williams while in detention or under arrest in connection with this case.

c. All written and oral statements made by Lonnie Williams to any law enforcement officers or others in connection with this case, and any testimony by the Denton Police Department or any other law enforcement officers or others concerning any such statements.

d. Any other matters that the Court finds should be suppressed upon hearing of this motion.

WHEREFORE, PREMISES CONSIDERED, Defendant prays that the Court suppress such matters at trial of this cause, and for such other and further relief in connection therewith that is proper.

Respectfully submitted,

Ollennu & Rudd Law, PLLC
2150 S. Central Expy. Ste. 200
McKinney, TX 75070
Tel: 469-620-0333
Fax: 469—620-0258

By /s/ Nii Amaa Ollennu
State Bar No. 24098205
nii@orltx.com
Attorney for Lonnie Williams

APPENDIX F

IN THE COUNTY CRIMINAL COURT NO. 1

DENTON COUNTY, TEXAS

CR-2016-07798-C

CR-2016-09707-A

STATE OF TEXAS

V.S.

LONNIE CHARLES WILLIAMS, III

FINDINGS OF FACT

AND

CONCLUSIONS OF LAW

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1. On May 14, 2016, the Defendant was driving a motor vehicle in Denton County, Texas.
2. The Lewisville Police Department received a 911 call from Kristopoher Laney. He describes the defendant as a reckless driver; driving toward cars; out of control; about to hit another car head on; ran through a stop sign; going 60 mph; out of his mind drunk; car jumped curb and vehicle became disabled; and once stopped a female poured out what the caller thought to be alcohol. The Court along with responding officers found the 911 caller to be very credible.
3. Officer Marida Buchanan was dispatched to the scene. Officer Buchanan found the defendant's vehicle to be badly damaged and not parked in a parking spot. She saw defendant standing by

the vehicle. Buchanan thought the defendant might be intoxicated. Buchanan knew the defendant had violated criminal offenses: speeding, driving into oncoming traffic and running a stop sign.

4. The driver admitted he was the driver of the vehicle.
5. The Court finds that Officer Buchanan had reasonable suspicion to stop and detain defendant for speeding, reckless driving, running a stop sign and suspicion of driving while intoxicated.
6. Officer Buchanan did further investigation for DWI and noticed; eyes were glossy, red and watery; slurred speech; driver was worried; driver failed HGN, walk and turn, and one leg stand field sobriety tests. Officer Buchanan determined these all to be indicators of intoxication together with the factors relayed by the 911 caller.
7. Defendant admitted to drinking alcohol.
8. The Court finds that Officer Buchanan had probable cause to arrest the defendant for DWI.
9. Officer Sammy Sanchez inventoried the defendant's vehicle after the arrest pursuant to the vehicle being towed. An automatic weapon was found in the trunk of the vehicle.

10. Court finds Officer Buchanan and Officer Sanchez to be credible witnesses.

11. Cases supporting conclusion of law. *Derichsweiler*, 348 S.W. 3d 906 (TCA 2011); *Pipkin*, 114 S.W. 3d 649 (Tex. App. —Fort Worth 2003);

Brother, 166 S.W. 3d 255 (TCA 2015); *Fudge*, 42 S.W. 3d 226 (Tex. App. — San Antonio 2001)

Signed this 13th day of January, 2017.

/s

Jim Crouch

Judge Presiding