

Affirmed and Memorandum Opinion filed April 10, 2025



**In The
Fourteenth Court of Appeals**

NO. 14-24-00102-CR

TONNERRIOUS JAMARCUS MCGEE, Appellant

V.

THE STATE OF TEXAS, Appellee

**On Appeal from the 122nd District Court
Galveston County, Texas
Trial Court Cause No. 23-CR-0270**

MEMORANDUM OPINION

Appellant Tonnerrious McGee appeals his conviction for evading arrest or detention with a vehicle, arguing in a single issue that there is legally insufficient evidence to prove he is the person who committed the offense. After reviewing the evidence in the light most favorable to the jury's verdict, we affirm.

BACKGROUND

Appellant was charged with evading arrest or detention with a vehicle. *See* Tex. Penal Code Ann. § 38.04(a), (b)(2). A jury trial was held at which the jury

Appendix A

heard from three witnesses: Officer Alexander, appellant, and Sergeant Whitley. The jury returned a guilty verdict. We summarize relevant portions of the witnesses' testimonies below.

A. Officer Alexander

Patrol Officer Alexander from the Friendswood Police Department testified that at approximately 6:25 p.m. during her January 16, 2023, shift she observed a gray Charger traveling thirteen miles per hour over the posted speed limit. She turned on her emergency lights to stop the Charger and the driver pulled into a nearby gas station parking lot. Alexander was wearing her patrol officer uniform and driving her marked patrol car during the stop. Although it was dark, she testified the gas station lights were bright enough for her to be able to see. Before exiting her patrol unit, she entered her location and the Charger's license plate into her computer. In her testimony regarding the Charger's license plate, Alexander transposed two of the letters and incorrectly stated one of the numbers.

Alexander approached the Charger and saw the driver's side window was rolled down about four inches. She positioned herself next to the driver's side mirror so she could clearly see anybody in the front of the Charger. She testified she was able to get a good look at the driver. Initially, she could not see through the heavily tinted back windows, but the driver eventually turned on the overhead light. She identified herself and the reason for the stop and asked for the driver's license and insurance. The driver did not provide any form of identification. Although he appeared to be speaking, she could not understand him, and he did not speak louder when asked. She leaned closer to the window than she normally would have to try and hear him, and although she still could not hear him, she could "see him quite clearly." Shortly after Alexander requested an additional unit to back her up, the driver aggressively pulled away from the scene.

The State played Alexander's bodycam video from the encounter. The video

shows the Charger's license plate, the partially rolled down driver's window, and Alexander standing near the driver's door and attempting to converse with the driver before the driver speeds away from the scene. After the driver speeds away, the video shows Alexander reentering her patrol unit and describing the driver as a Black male wearing a red shirt and basketball shorts. Alexander initially testified she described the driver's shirt as white, but on cross examination she did not dispute she had described it as red.

After Alexander reported her belief there was a child in the Charger, her supervisor ordered her to terminate pursuit. She pulled over and immediately researched the registered owner of the Charger. After looking at the driver's license photo of the registered owner, she identified the registered owner as the person she saw driving the Charger minutes before. Alexander confirmed the driver's license photo she used for identification belonged to appellant. In court, Alexander identified appellant as the person who evaded her on January 16, 2023. Upon cross-examination, Alexander testified she did not believe the driver was wearing glasses, but that she could not remember that far back.

B. Appellant

Appellant testified that when police arrested him on January 17, 2023, he was very surprised by the charges. He confirmed the Charger was his vehicle and registered in his name. He testified he was not the person seen driving in the bodycam video and he did not know who was driving the Charger at that time. Approximately four other people, including family members and his domestic partner, possessed keys to the Charger. The Charger was not his primary means of transportation and people who borrowed the Charger were not required to notify him and did not always do so. Additionally, he testified that he always wore glasses when he drove, his driver's license requires him to do so, and that he would not be able to drive in the conditions depicted in the bodycam video because of his

vision.

Appellant further testified that an impound lot also had a key to the Charger on January 16, 2023, because the impound lot failed to return the key when it previously returned the Charger. Appellant introduced into evidence a crash report from a pending extraneous evading that occurred on June 9, 2022. On that date, a crash occurred that led to the Charger being impounded. Appellant confirmed he was driving the Charger during that incident. He admitted that he was accused of evading with a vehicle during the June 9 incident, but testified he was not guilty of the offense and that the case was still pending. He testified that the crash on June 9 occurred because the Pearland Police Department disabled the Charger using “emergency equipment” that caused him to lose control of braking and steering. He did not recall an officer trying to pull him over and denied the officer was using his lights and sirens.

C. Sergeant Whitley

Sergeant Whitley with the Pearland Police Department testified about the extraneous June 9 evading incident that appellant introduced during his testimony. Whitley testified that on the morning of June 9, 2022, he attempted to pull over a gray Charger driving with no registration sticker. Instead of stopping, the Charger drove away at a high rate of speed and crashed. After he arrived on the scene immediately after the crash, Whitley identified appellant as the driver of the Charger and arrested him for multiple offenses, including evading while using a vehicle. Whitley testified his patrol car did not have the capability of deactivating another car. Whitley identified appellant in the courtroom as the driver who evaded him.

ANALYSIS

In a single issue, appellant argues the evidence is legally insufficient to support his conviction for evading arrest or detention with a vehicle because

Alexander's observations were too inconsistent and inaccurate to positively identify him as the driver of the Charger.

A. Standard of review and applicable law

A claim regarding sufficiency of the evidence does not need to be preserved for appellate review at the trial level, and it is not forfeited by the failure to do so. *See Moff v. State*, 131 S.W.3d 485, 489 (Tex. Crim. App. 2004).

In determining whether the evidence is legally sufficient to support a conviction, this court considers "all the evidence in the light most favorable to the verdict and" determines "whether, based on that evidence and reasonable inferences therefrom, a rational juror could have found the essential elements of the crime beyond a reasonable doubt." *Hooper v. State*, 214 S.W.3d 9, 13 (Tex. Crim. App. 2007) (citing *Jackson v. Virginia*, 443 U.S. 307, 318–19 (1979); *Powell v. State*, 194 S.W.3d 503, 506 (Tex. Crim. App. 2006); *Guevara v. State*, 152 S.W.3d 45, 49 (Tex. Crim. App. 2004)). We presume that the jury resolved conflicting inferences in favor of the verdict, and we defer to its determination of the evidentiary weight and witness credibility. *See Braughton v. State*, 569 S.W.3d 592, 608 (Tex. Crim. App. 2018). We consider both direct and circumstantial evidence, as well as any reasonable inferences that may be drawn from the evidence. *See Balderas v. State*, 517 S.W.3d 756, 766 (Tex. Crim. App. 2016). Circumstantial evidence is as probative as direct evidence in establishing the guilt of an actor. *See Hooper*, 214 S.W.3d at 13. Circumstantial evidence alone can be sufficient to establish guilt. *See id.*

As with every other element of an offense, the State must prove beyond a reasonable doubt that the accused is the person who committed the charged offense. *See Bradley v. State*, 359 S.W.3d 912, 916 (Tex. App.—Houston [14th Dist.] 2012, pet. ref'd) (citing *Johnson v. State*, 673 S.W.2d 190, 196 (Tex. Crim. App. 1984)). The State may prove a defendant's identity by either direct or

circumstantial evidence, coupled with all reasonable inferences from that evidence. *Jenkins v. State*, 493 S.W.3d 583, 599 (Tex. Crim. App. 2016).

A person commits evading arrest or detention with a vehicle if he, while using a vehicle, intentionally flees from a person he knows is a peace officer attempting lawfully to arrest or detain him. Tex. Penal Code § 38.04(a), (b)(2)(A). Because Appellant only challenges the sufficiency of the evidence to prove his identity, we focus our analysis on the evidence linking him to the crime in this case.

B. Application

Appellant complains the evidence is insufficient to prove identity because he was not arrested at the time of the incident and Alexander's testimony was not sufficiently reliable or accurate to positively identify him as the evading driver. Appellant highlights that when Alexander testified about the Charger's license plate, she described a license plate with two transposed letters and a different last number than the Charger's actual license plate. Appellant argues this testimony proves that Alexander searched for the wrong license plate in her computer, and that as a result she based her identification of appellant on the driver's license photograph of the owner of the wrong vehicle. Appellant further argues Alexander's testimony was insufficient because she testified inconsistently about the color of the driver's shirt, she could not remember if the driver was wearing glasses, and she admitted that the case was a long time ago and she did not remember specific issues.¹

¹ Appellant also challenges Alexander's courtroom identification of him as the evading driver, arguing that at the time of the identification the only other male present in the courtroom besides appellant was a male defense attorney Alexander had previously met. However, appellant provides no record citation supporting this claim, nor have we found such support. As such, we do not address this argument.

Appellant has not cited any authority supporting his argument that, due to defects in Alexander's testimony, no rational juror could have believed the evidence proved the accused's identity beyond a reasonable doubt. Nor have we found such authority.

The Texas Court of Criminal Appeals has considered the reliability of eye witness testimony when answering whether that evidence could be legally sufficient to support a conviction. *See Aguilar v. State*, 468 S.W.2d 75, 77 (Tex. Crim. App. 1971). In *Aguilar v. State*, the Court of Criminal Appeals concluded that the testimony of one eye witness "alone was sufficient to support the jury's verdict." *Id.* The jury is the sole judge of credibility and the weight to be attached to witnesses' testimony. *Temple v. State*, 390 S.W.3d 341, 360 (Tex. Crim. App. 2013). It is the jury's responsibility to fairly resolve conflicts in the testimony. *See Harrell v. State*, 620 S.W.3d 910, 914 (Tex. Crim. App. 2021) (quoting *Jackson*, 443 U.S. at 319). Thus, the jury may accept one version of the facts and reject another, and it may reject any part of a witness's statements. *See Kelley v. State*, 429 S.W.3d 865, 872 (Tex. App.—Houston [14th Dist.] 2014, pet. ref'd).

The State presented evidence that, although it was dark outside at the time of Alexander's encounter with the Charger, the gas station lights were bright, the driver turned on the Charger's interior overhead light, Alexander stood next to the driver's window to speak with him and at one point leaned closer to try and better hear him, and the driver's window was cracked open approximately four inches. Alexander testified that she was able to see the driver "quite clearly." She further testified that she viewed appellant's driver's license photo immediately after she ceased pursuing the Charger and identified appellant as the person she saw driving the Charger. She identified appellant in court as the driver who evaded her.

In addition to Alexander's direct testimony, the record contains circumstantial evidence that supports the jury's guilty verdict. Appellant confirmed

he was the registered owner of the Charger. Appellant introduced into evidence the crash report from a previous incident in which he was accused of evading detention with a vehicle. The jury heard appellant confirm he was driving the Charger during that prior incident, and it heard Whitley's testimony that during the prior incident, appellant sped away from him after he tried to conduct a traffic stop.

To the extent inconsistencies or conflicts existed among Alexander's testimony and other evidence, such as the Charger's license plate and appellant's testimony, the jury weighed and resolved those conflicts. *See Jackson v. State*, 530 S.W.3d 738, 742 (Tex. App.—Houston [14th Dist.] 2017) (citing *Mosley v. State*, 983 S.W.2d 249, 254 (Tex. Crim. App. 1998); *Price v. State*, 502 S.W.3d 278, 281 (Tex. App.—Houston [14th Dist.] 2016); *Bradley v. State*, 359 S.W.3d 912, 917 (Tex. App.—Houston [14th Dist.] 2012, pet. ref'd)). We presume the jury resolved conflicting inferences in favor of the verdict, and we defer to its determination of the evidentiary weight and witness credibility. *See Braughton*, 569 S.W.3d at 608. The jury was free to disbelieve appellant's testimony that someone else was driving the Charger at the time of the offense, and the jury was free to believe Alexander's testimony that she identified appellant as the driver by using the Charger's license plate to locate and view his driver's license photo. *See Kelley*, 429 S.W.3d at 872.

Viewing all the evidence presented to the jury in the light most favorable to the verdict, we conclude that a rational jury could have found beyond a reasonable doubt that appellant committed the offense of evading arrest or detention with a vehicle as charged. *See Jackson*, 530 S.W.3d at 742 (holding evidence was legally sufficient to establish identity of defendant as driver who evaded arrest); *Castilla v. State*, 374 S.W.3d 537, 540 (Tex. App.—San Antonio 2012, pet. ref'd) (same). Accordingly, we hold that the evidence is sufficient to support appellant's conviction.

CONCLUSION

We overrule appellant's sole issue and affirm the trial court's judgment.

/s/ Ken Wise
Justice

Panel consists of Justices Wise, Bridges, and Antú.

Do not publish — TEX. R. APP. P. 47.2(b).

April 10, 2025



JUDGMENT

The Fourteenth Court of Appeals

TONNERRIOUS JAMARCUS MCGEE, Appellant

NO. 14-24-00102-CR

V.

THE STATE OF TEXAS, Appellee

This cause was heard on the appellate record. Having considered the record, this court holds that there was no error in the judgment. The court orders the judgment **AFFIRMED**.

We further order this decision certified below for observance.

Judgment Rendered April 10, 2025.

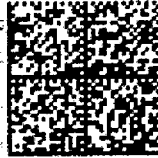
Panel Consists of Justices Wise, Bridges, and Antú. Opinion delivered by Justice Wise.

Appendix B

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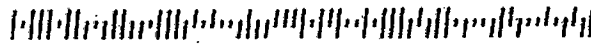
PD-0285-25

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

Deana Williamson, Clerk

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PO BOX 922
PEARLAND, TX 77588
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Appendix D

**Additional material
from this filing is
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