Affirm; Opinion Filed June 23, 2020

In The
Court of Appeals
Fifth District of Texas at Dallas

No. 05-19-00398-CR

LEAH RENEA EASTER, Appellant
V.
THE STATE OF TEXAS, Appellee

On Appeal from the 86th Judicial District Court
Kaufman County, Texas
Trial Court Cause No. 18-10653-86-F

MEMORANDUM OPINION

Before Justices Osborne, Partida-Kipness, and Pedersen, III
Opinion by Justice Pedersen, III

Appellant Leah Renea Easter was charged with the offense of evading arrest or detention while using a vehicle. A jury found her guilty and sentenced her to two years in prison. Appellant raises four issues on appeal. She complains that the evidence was insufficient to support her conviction. She asserts the trial court erred by not conducting a formal competency hearing and by denying her request for a jury charge instruction on spoliation of evidence. She also asserts that Kaufman County law enforcement erred by failing to properly record and preserve a dash cam video. We affirm.

Background

Kaufman County Sheriff's Deputy Danny Howard stopped at a gas station to use the restroom. As he walked out of the station, he noticed a car without a registration sticker. He got into his patrol vehicle, called dispatch to run the license plate number, and followed the car out of the parking lot. Upon learning that the car's license plates were expired, he activated the lights and siren on his patrol SUV to perform a traffic stop. However, appellant (the driver) did not stop her car.

Deputy Howard followed appellant for five to seven miles. He was directly behind her vehicle, in broad daylight, on a clear day. He could tell that she was aware that he was behind her with his lights and siren on. There were several places where she could have safely pulled off the road. Deputy Howard noted three or four church parking lots and another gas station. Nevertheless, appellant continued driving. She did not speed or drive recklessly. She maintained a speed at or below the posted speed limit at all times. However, because appellant did not pull over and stop her car, and because they were approaching the county line, Deputy Howard called dispatch to report a pursuit.

After about ten minutes, appellant turned into a driveway, drove through an automatic gate, stopped her car, and got out. As Deputy Howard followed her car, the gate began closing. He instructed appellant to get back in her car and pull up so he could drive through the gate. Appellant followed his instructions. She then got out of her car holding a bag and other items in her hands. Deputy Howard pulled his

gun and approached appellant, demanding that she drop what was in her hands. When he asked why she refused to stop, appellant told him she feared for her life. She also refused to identify herself. Perceiving there was no danger, Deputy Howard holstered his weapon, handcuffed appellant, and placed her in his vehicle. Sergeant Maynard and another patrol deputy arrived shortly thereafter to assist Deputy Howard.

During the investigation, a gentleman walked up to talk to officers. He refused to identify himself, but he told officers that appellant had psychiatric problems. While searching appellant's car, officers found a Wyoming identification card that identified appellant as Leah Renea Easter. When dispatch confirmed that appellant had four outstanding traffic warrants, she was arrested and taken to jail.

Appellant was indicted for the offense of evading arrest or detention while using a vehicle. A jury found appellant guilty and assessed a punishment of two years in prison. This appeal followed.

Discussion

A. Evading Arrest or Detention While Using a Vehicle

Appellant first contends that the evidence is legally insufficient to support her conviction for evading arrest or detention while using a vehicle. Appellant argues that the primary policy consideration of the evading arrest statute is to encourage suspects to yield to a show of authority by law enforcement. She contends that by stopping immediately upon getting to her residence, she yielded to the show of

authority by the officer in this case. Therefore, according to appellant, she did not commit the offense of evading arrest or detention while using a vehicle. And she further contends there is no evidence that she did so.

In evaluating the legal sufficiency of the evidence, we consider the evidence in the light most favorable to the verdict to determine whether any rational fact finder could have found the essential elements of the offense beyond a reasonable doubt. *Jackson v. Virginia*, 443 U.S. 307, 319 (1979); *Johnson v. State*, 560 S.W.3d 224, 226 (Tex. Crim. App. 2018). We defer to the trier of fact to "fairly resolve conflicts in the testimony, to weigh the evidence, and to draw reasonable inferences from basic facts to ultimate facts." *Villa v. State*, 514 S.W.3d 227, 232 (Tex. Crim. App. 2017).

A person commits the offense of evading arrest or detention if she intentionally flees from a person she knows is a peace officer attempting lawfully to arrest or detain her and uses a vehicle while she is in flight. TEX. PENAL CODE § 38.04. Thus, the State was required to prove that appellant was: (1) intentionally, (2) fleeing, (3) from a person, (4) she knew was a peace officer, (5) attempting to lawfully arrest or detain her, and (6) she used a vehicle while in flight. *See Jackson v. State*, Nos. 05-15-00414-CR, 05-15-00415-CR, 2016 WL 4010067, at *7 (Tex. App.—Dallas July 22, 2016, no pet.) (mem. op., not designated for publication). A person "flees" by giving anything less than prompt compliance with an officer's direction to stop. *Lopez v. State*, 415 S.W.3d 495, 497 (Tex. App.—San Antonio

2013, no pet.) (quoting *Horne v. State*, 228 S.W.3d 442, 446 (Tex. App.—Texarkana 2007, no pet.)). The fact that a defendant caused only a slow-speed chase does not free that defendant from culpability. *Perry v. State*, No. 02-19-00262-CR, 2020 WL 479590, at *4 (Tex. App.—Fort Worth Jan. 30, 2020, pet. ref'd) (mem. op., not designated for publication). Speed, distance, and duration are all factors in determining whether a defendant intentionally fled. However, "no particular speed, distance, or duration is required to show the requisite intent if other evidence establishes such intent." *Griego v. State*, 345 S.W.3d 742, 751 (Tex. App.—Amarillo 2011, no pet.) "The statute does not require high-speed fleeing, or even effectual fleeing." *Mayfield v. State*, 219 S.W.3d 538, 541 (Tex. App.—Texarkana 2007, no pet.). "[F]leeing slowly is still fleeing." *Lopez*, 415 S.W.3d at 497.

In this case, the evidence established that Deputy Howard followed appellant for five to seven miles with his lights and siren activated. Evidence that a peace officer is asserting authority and attempting to arrest or detain an individual includes the use of emergency lights and sirens. *King v. State*, No. 01-18-00335-CR, 2019 WL 5432053, at *3 (Tex. App.—Houston [1st Dist.] Oct. 24, 2019, pet. ref'd) (mem. op., not designated for publication). Deputy Howard testified that he could tell from the way appellant kept looking in her rear view mirror that she knew he was behind her and she knew he had activated his lights and siren. Appellant does not argue that she did not know that Deputy Howard was following her. Nevertheless, she continued driving past several locations where she could have safely pulled over and

stopped her car. Appellant suggests that because she was not speeding or driving recklessly, she was not evading arrest. However, she did not promptly comply with Deputy Howard's direction to stop her car, and "fleeing slowly is still fleeing." *Lopez*, 415 S.W.3d at 497.

When Deputy Howard asked appellant why she did not stop her car, she said she feared for her life. However, the fact that appellant provided an explanation for fleeing does not negate or supersede her intent to evade the authority of a peace officer. *See Perry*, 2020 WL 479590, at *5. Deputy Howard testified that she did not appear to be afraid. He also confirmed that appellant did not call 911 to report that she was being followed and was afraid to pull over.

We conclude that the jury could rationally infer from the evidence that appellant was intentionally fleeing from Deputy Howard because she knew that Deputy Howard was a peace officer who was attempting to lawfully arrest or detain her. *Villa*, 514 S.W.3d at 232. Therefore, the evidence is legally sufficient to support appellant's conviction, and her first issue is overruled.

B. Trial to Determine Incompetency

In her second issue, appellant asserts the trial court erred by not conducting a formal competency exam hearing after defense counsel notified the trial court that he had questions about appellant's competency. She also argues the trial court erred by not ensuring that she understood the full nature of the State's last-minute plea

offer. The State challenges appellant's second issue as multifarious, inadequately briefed, and not preserved for appeal.

Appellant's competency and her understanding of the State's plea offer were topics of much discussion by the trial court and defense counsel. However, the record reveals that appellant failed to specifically object to the trial court's failure (1) to hold a trial to determine whether appellant was incompetent to stand trial, and (2) to ensure appellant understood the State's plea offer. *See* TEX. R. APP. P. 33.1 (To preserve error, appellant must present to the trial court a timely, specific objection and obtain an adverse ruling.). Even if appellant had raised these specific objections to the trial court, we conclude the trial court did not abuse its discretion.

We review the facts surrounding the trial court's implied decision not to hold a competency hearing for an abuse of discretion. *Moore v. State*, 999 S.W.2d 385, 393 (Tex. Crim. App. 1999); *Gray v. State*, 257 S.W.3d 825, 827 (Tex. App.—Texarkana 2008, pet. ref'd). "A person is incompetent to stand trial if the person does not have: (1) sufficient present ability to consult with the person's lawyer with a reasonable degree of rational understanding; or (2) a rational as well as factual understanding of the proceedings against the person." TEX. CODE CRIM. PROC. art. 46B.003(a); *see also Fuller v. State*, 253 S.W.3d 220, 228 (Tex. Crim. App. 2008). "A defendant is presumed competent to stand trial and shall be found competent to stand trial unless proved incompetent by a preponderance of the evidence." CRIM. PROC. art 46B.003(b).

The code of criminal procedure dictates that "[i]f evidence suggesting the defendant may be incompetent to stand trial comes to the attention of the court, the court on its own motion shall suggest that the defendant may be incompetent to stand trial." CRIM. PROC. art. 46B.004(b). Also, "[o]n suggestion that the defendant may be incompetent to stand trial, the court shall determine by informal inquiry whether there is some evidence from any source that would support a finding that the defendant may be incompetent to stand trial." *Id*. art. 46B.004(c). In this case, the trial court conducted such an informal inquiry.

Appellant was arrested on September 8, 2018. According to the record, on September 24, 2018, the trial court [Honorable B. Michael Chitty] signed an Agreed Order for Examination Regarding Incompetency, ordering Dr. Michael Pittman to examine Leah Easter to determine if she was incompetent to stand trial in this cause. The order states: "On September 24, 2018, the Court considered the suggestion of incompetency to stand trial in this cause with respect to LEAH EASTER, Defendant, and the Court is of the opinion that there is evidence to support a finding of incompetency and that Defendant should be examined as provided by Article 468.021 [sic] of the Texas Code of Criminal Procedure."

After evaluating appellant on two separate occasions, Dr. Pittman filed his report with the court on October 28, 2018. Dr. Pittman found appellant to be remarkably uncooperative; however, he concluded that she rationally understood the charges against her and knew the consequences of the proceedings against her. He

opined that appellant could testify on her own behalf and, from what he could tell, she did not have a current mental illness. He also found her to be capable of cooperating with her attorney in formulating a defense with a reasonable degree of rational understanding. In Dr. Pittman's opinion, appellant was competent to stand trial.

At a pretrial hearing on January 3, 2019, the trial court [Honorable Casey Blair] attempted to ascertain whether appellant understood the charges against her. Appellant initially refused to answer the judge's questions. When the judge persisted, she told him that she was remaining silent. She then stated that she did not understand his language. The judge continued to question her about her understanding of the charges against her, her legal options, and the plea offer from the State. Appellant responded to most of the judge's questions by stating, "without any definitions in writing." Finally, the judge asked defense counsel if he had reviewed everything with his client. Counsel affirmed that he had reviewed the indictment, the range of punishment, and the State's plea offer with his client.

After discussing several pending motions with counsel, the judge again asked appellant if she understood the charges against her. When she again stated, "without any definitions in writing," the judge said, "I don't know what that means." Appellant then stated, "I'm unfamiliar with the language." At this point, the judge asked defense counsel if he believed his client was mentally competent to move forward on this case. Counsel replied:

> Your Honor, I can represent to the Court that based on some of her responses to my questions in our discussions, I had a concern with that prior to indictment. Judge Chitty ordered a competency evaluation that came back sometime, I believe, in October by Dr. Pittman certifying that Ms. Easter was competent legally to stand trial.

After reading Dr. Pittman's report, the judge noted that Dr. Pittman seemed to think that appellant understood what was going on and that she understood the consequences of her actions. The judge cautioned appellant about her refusal to cooperate with the court and again asked if she understood the charges against her. Appellant responded that she wanted definitions in writing of the language in the papers, and she refused to elaborate further. The judge gave appellant a copy of the indictment and explained the charges against her. He also explained the State's plea offer. He then concluded the hearing.

At the pretrial on January 28, 2019, defense counsel advised the court that his client had rejected the State's most recent plea offer. Counsel called appellant to the stand to testify that she understood the State's offer and rejected it. However, appellant refused to swear to tell the truth and only responded by stating, "I'm remaining silent." Despite efforts by defense counsel and the court, appellant did not change her response. The judge finally told counsel he would not allow appellant to testify. The judge asked the State to read its plea offer into the record. The judge then questioned defense counsel, who confirmed that he had explained the State's offer to appellant, he believed that she understood it, and she told him that she was rejecting it.

The record reveals no evidence to rebut the presumption of competence such that the trial court would have been required to make further inquiry into appellant's competence. Dr. Pittman did not find appellant to be incompetent to stand trial. Defense counsel did not challenge Dr. Pittman's opinion. When asked by the court, defense counsel responded that he had a concern about her competence based on their discussions *prior to indictment*. However, he did not indicate that he had continuing concerns. He did not inform the court that appellant was unable to consult with him with a reasonable degree of rational understanding, and he did not inform the court that appellant lacked a rational and factual understanding of the proceedings against her. Instead, on several occasions, defense counsel confirmed that he believed appellant understood the proceedings and the State's plea offer. Finally, the record reflects that defense counsel did not request a trial on the issue of incompetency,[1] or object to the lack thereof, despite opportunity to do so during the second pretrial hearing on January 28, 2019, and during the jury trial that began on March 18, 2019.

"A competency hearing is not required unless the evidence is sufficient to create a *bona fide* doubt in the mind of the judge whether the defendant meets the test of legal competence." *Moore*, 999 S.W.2d at 393. Based on the record, it appears

[1] "A trial under this chapter is not required if: (1) neither party's counsel requests a trial on the issue of incompetency; (2) neither party's counsel opposes a finding of incompetency; and (3) the court does not, on its own motion, determine that a trial is necessary to determine incompetency." CRIM. PROC. art. 46B.005(c).

that the trial court satisfied itself by its informal inquiry that appellant was competent, and proceeded with a trial on the merits. *See* CRIM. PROC. art. 46B.053 ("If the court or jury determines that the defendant is competent to stand trial, the court shall continue the trial on the merits."). Given the thorough informal inquiry made by the trial court prior to trial, we conclude that the trial court did not abuse its discretion by failing to conduct further inquiry into appellant's competency or by failing to conduct an incompetency trial. We overrule appellant's second issue.

C. The Missing Dash Cam Video

Appellant's third and fourth issues pertain to missing evidence—the dash cam video of Deputy Howard's pursuit of appellant. At the pretrial hearing, the trial court ordered the State to turn over all video recordings to defense counsel. The court noted that the State had reported an electronic problem in downloading the dash cam video. The court stated that if the video was not produced in time for appellant and her counsel to review it before trial, it would not be admissible at trial.

The State finally produced three officer body cam videos one hour before trial was to begin; it did not produce a dash cam video. The trial court stated that because this evidence was turned over at the eleventh hour, it would only be admissible if defense counsel decided to use the evidence at trial.

Deputy Howard was questioned about the dash cam video during his testimony at trial. He explained that when the lights and siren are activated in his patrol SUV, the dash cam video recorder begins recording in the front and rear of

the vehicle. He stated that the dash cam was on and activated during his pursuit of appellant. He could not explain what happened to dash cam video in this case. He said it was his understanding that there had been a main server problem in downloading the video. Deputy Howard was the only witness at the trial. No other evidence was presented regarding the dash cam video.

In her third issue, appellant complains that Kaufman County law enforcement erred by failing to properly record and preserve the dash cam video of the alleged offense. In discussing this issue, she reasons: "[I]t is generally understood that the criminal defendant must show the failure to preserve useful evidence was the result of bad faith on the part of the police to support the claim that the defendant was denied a fair trial under the due process clause of the United States Constitution," and she cites to several cases in support of this statement. She concludes by asserting that the late release of the body cam videos and the failure to preserve the dash cam video show bad faith on the part of law enforcement.

According to the record, defense counsel requested the dash cam video. The record also contains comments by the trial court about the State's technical problems in viewing or downloading the video. But the record does not include an objection by appellant or her counsel that Kaufman County law enforcement erred by failing to properly record and preserve the alleged criminal episode with the dash cam video. Further, appellant does not articulate an objection or argument—to the trial

court or in her appellate brief—that the State violated her due process rights to a fair trial by failing to properly record and preserve the dash cam video.

To preserve error for appellate review, an appellant must present to the trial court a timely, specific objection and obtain an adverse ruling. *See* TEX. R. APP. P. 33.1(a); *Pena v. State*, 285 S.W.3d 459, 464 (Tex. Crim. App. 2009). A failure to object to constitutional errors waives appellate review of those claims. *Clark v. State*, 365 S.W.3d 333, 339 (Tex. Crim. App. 2012). Because the record contains no indication that appellant brought this complaint to the attention of the trial court, we conclude that appellant waived her complaint on appeal by failing to raise it in the trial court. *See Hull v. State*, 67 S.W.3d 215, 216–17 (Tex. Crim. App. 2002) (defendant waived due process complaint when raised for first time on appeal); *Jackson v. State*, 495 S.W.3d 398, 419 (Tex. App.—Houston [14th Dist.] 2016, pet. ref'd) (defendant failed to preserve claim that State violated his due process rights by destroying evidence).

In her fourth issue, Appellant argues that the trial court erroneously denied her request for a jury charge instruction on spoliation of evidence with respect to the dash cam video. When reviewing a complaint of jury charge error, we first determine whether error exists in the charge. *Cortez v. State*, 469 S.W.3d 593, 598 (Tex. Crim. App. 2015). If error exists, we then determine whether the error caused sufficient harm to warrant reversal. *Ngo v. State*, 175 S.W.3d 738, 744 (Tex. Crim. App. 2005).

Because we conclude the charge was not erroneous in this case, we do not conduct a harm analysis.

The trial court denied appellant's request for a spoliation instruction because there was no showing of bad faith on the part of the State or law enforcement in failing to preserve or produce the video. On appeal, appellant argues that she had no obligation to show bad faith. However, she fails to support her argument with citation to authorities. *See* TEX. R. APP. P. 38.1(i). And she is mistaken.

Spoliation pertains to the loss or destruction of evidence. *Guzman v. State*, 539 S.W.3d 394, 401 (Tex. App.—Houston [1st Dist.] 2017, pet. ref'd). "In addressing the State's failure to preserve evidence in a criminal trial, there is a distinction between 'material exculpatory evidence' and 'potentially useful evidence.'" *Moody v. State*, 551 S.W.3d 167, 170 (Tex. App.—Fort Worth 2017, no pet.) (citing *Arizona v. Youngblood*, 488 U.S. 51, 57–58 (1988)). If the State fails to disclose material exculpatory evidence, a due process violation occurs, regardless of whether the State acted in bad faith. *Id*. (citing *Illinois v. Fisher*, 540 U.S. 544, 547 (2004)). In contrast, when spoliation concerns potentially useful evidence, the defendant must show that the State acted in bad faith in losing or destroying the evidence. *Guzman*, 539 S.W.3d at 401.

In this case, appellant never argues that the missing video was exculpatory evidence. She refers to the missing dash cam video as "useful evidence" in the third issue of her appellate brief. In her fourth issue, she discussed how the dash cam video

could have shown the jury precisely when the officer activated his lights to signal that appellant should yield to his authority—in other words, it was potentially useful evidence. Therefore, appellant had the burden of showing that the State and law enforcement acted in bad faith in losing or destroying the dash cam video. *Moody*, 551 S.W.3d at 170.

On appeal, appellant argues that the last-minute production of the body cam videos and the failure to preserve the dash cam video show bad faith on the part of law enforcement. However, there was no showing of bad faith at trial. *See Ex parte Napper*, 322 S.W.3d 202, 231–35 (Tex. Crim. App. 2010) (examining what constitutes "bad faith"). According to the record, there were technical difficulties, but no one seemed to know the exact reason why the Sheriff's Department was unable to download the dash cam video from Deputy Howard's patrol vehicle. Even in her appellate brief, appellant states, "[i]t's not clear why there was no dash cam video in this case."

When appellant requested a spoliation instruction, the State objected and argued that appellant had not produced any evidence or testimony to satisfy its burden to show bad faith. The court gave defense counsel an opportunity to provide additional argument in response to the State's objection, but defense counsel declined. The court then agreed with the State that some showing of bad faith was required and denied appellant's request for a spoliation instruction.

Because appellant did not meet her burden to show that the State or law enforcement acted in bad faith by failing to properly record and preserve the dash cam video, we conclude the trial court did not err in denying appellant's request for a spoliation jury instruction. *Moody*, 551 S.W.3d at 172 ("There must be a showing of bad faith on the part of the State to warrant a spoliation instruction."). We overrule appellant's third and fourth issues.

Conclusion

Having overruled all of appellant's issues, we affirm the trial court's judgment.

/Bill Pedersen, III//
BILL PEDERSEN, III
JUSTICE

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TEX. R. APP. P. 47.4

Court of Appeals
Fifth District of Texas at Dallas

JUDGMENT

LEAH RENEA EASTER, Appellant	On Appeal from the 86th Judicial District Court, Kaufman County, Texas
No. 05-19-00398-CR V.	Trial Court Cause No. 18-10653-86-F.
THE STATE OF TEXAS, Appellee	Opinion delivered by Justice Pedersen, III. Justices Osborne and Partida-Kipness participating.

Based on the Court's opinion of this date, the judgment of the trial court is **AFFIRMED**.

Judgment entered this 23rd day of June, 2020.