AFFIRMED and Opinion Filed July 1, 2020

In The
Court of Appeals
Fifth District of Texas at Dallas

No. 05-19-00929-CR

STONEY THURSBY, Appellant
V.
THE STATE OF TEXAS, Appellee

On Appeal from the County Court at Law No. 2
Hunt County, Texas
Trial Court Cause No. CR1700686

MEMORANDUM OPINION

Before Justices Bridges, Pedersen, III, and Evans
Opinion by Justice Bridges

Stoney Thursby appeals his "duty on striking fixture or highway landscaping" conviction. A jury convicted appellant, and the trial court sentenced appellant to 180 days' confinement. In two issues, appellant argues the trial court erred in denying his motion for a continuance, and the evidence is insufficient to support his conviction. We affirm the trial court's judgment.

In June 2017, appellant was charged by information with the following offense:

> having been the operator of a vehicle involved in an accident resulting only in damage of $200 or more to a fixture legally on or adjacent to a

> highway, to wit: a sign, intentionally or knowingly fail[ed] to take reasonable steps to locate or notify person in charge of the property of the accident.

The record reflects that, prior to trial, the case was reset for various matters at least ten times and was finally set for a jury trial on July 22, 2019. At trial, Becky Harmon testified she is the manager of a Neighborhood Wal-Mart in Greenville, Texas. At approximately 11:00 p.m. on April 21, 2017, Harmon was at the front of the store when she "felt the building shift." Harmon ran to the door and saw a red truck that had hit a concrete pole right outside the exit doors. Harmon also saw appellant walking away from the truck. Harmon "was hollering . . . 'hey, hey, stop'" and "I've called the police, wait" to appellant, but he never turned around and "just continued walking."

After the accident, Harmon began the process of having the damage repaired, and appellant's insurance company subsequently contacted her. However, when asked, "did anyone ever come up to say, hey, I'm the owner of that truck that hit your guy's [sic] sign," Harmon answered, "Never." Harmon testified that, if someone had come in and said he was the owner of the truck, there would have been a record, but there was no such record in this case. Harmon eventually received a $1410.92 check from appellant's insurance company. Greenville police officer Keith Herron testified he watched Wal-Mart's security video of the accident, and he recognized the truck and the driver, appellant.

On the second day of trial, outside the presence of the jury, appellant testified he went to Wal-Mart the previous day to obtain the name of a manager he had spoken to after the accident. Appellant testified the manager's name was Adrian Morones, but appellant did not speak to Morones because he was on vacation. Appellant testified as follows:

> I talked to [Morones] before, because I – I was trying to find out why I hadn't got a letter from my insurance company. I told him – he said, well, all I do is just turn it in to the insurance. Normally you get a paper saying how much they paid or whatever happened. I never got one in the last two years. So he said, I just turn it in.

Appellant testified he "gave [Morones] the information the next morning . . . on [his] insurance" and requested a continuance "until Mr. Morones can get to town" and testify. The trial court denied the motion for continuance, stating "it says that you have to advise them within a reasonable time and the court's going to find that ten – ten or eleven hours after the accident is not a reasonable time." Appellant's counsel continued to argue "that's an issue for the jury," and the trial court again denied the motion for continuance, prompting the prosecutor to interject that "Harmon's always been in the police report and on the State's witness list, as the only person from Wal-Mart" and the case had been "set for trial since March 15th." Appellant did not testify on his own behalf in front of the jury.

Once again in the presence of the jury, Greenville police lieutenant Aaron Huddleston testified he was dispatched to Wal-Mart on the night of the accident. Huddleston saw a red truck that had struck a concrete signpost, but the driver "had

fled or left the scene." Huddleston testified that, if the driver had still been there, he would have first made sure the driver was not injured and then would have assessed whether the driver was impaired or intoxicated. However, under the circumstances, "it was just removing the vehicle and conducting the accident investigation." As part of impounding the truck, Huddleston inventoried the truck and discovered a debit card with appellant's name on it. Huddleston also ran a registration check on the truck, which "came back to a Walter Thursby," and records indicated Walter was deceased. At the conclusion of trial, the jury found appellant guilty of the offense of duty on striking fixture/highway landscape. This appeal followed.

In his first issue, appellant argues the trial court erred in denying his motion for a continuance on the second day of trial. We review the denial of a motion for continuance for an abuse of discretion, giving a wide degree of deference to the trial court. *See Vasquez v. State*, 67 S.W.3d 229, 240 (Tex. Crim. App. 2002). During trial,

> [a] continuance or postponement may be granted on the motion of the State or defendant after the trial has begun, when it is made to appear to the satisfaction of the court that by some unexpected occurrence since the trial began, which no reasonable diligence could have anticipated, the applicant is so taken by surprise that a fair trial cannot be had.

TEX. CODE CRIM. PROC. ANN. art. 29.13. But Article 29.08 provides, "*[a]ll* motions for continuance must be *sworn* to by a person having knowledge of the facts relied on for the continuance." *Id.* art. 29.08 (emphases added). If a party makes an

unsworn, oral motion for continuance before or during trial and the trial court denies it, then the party forfeits the right to complain on appeal about the trial court's ruling. *See Anderson v. State*, 301 S.W.3d 276, 279–81 (Tex. Crim. App. 2009) (pretrial oral motion for continuance failed to preserve for appellate review complaint that the trial judge erred by denying motion); *Dewberry v. State*, 4 S.W.3d 735, 755–56 (Tex. Crim. App. 1999) (three oral motions for continuance during trial preserved nothing for appellate review); *Matamoros v. State*, 901 S.W.2d 470, 478 (Tex. Crim. App. 1995) (oral motion for continuance after conclusion of the State's case-in-chief did not preserve error for appellate review); *Robinson v. State*, 310 S.W.3d 574, 578–79 (Tex. App.—Fort Worth 2010, no pet.) ("[T]he denial of an oral motion for continuance preserves nothing for our review."). Thus, appellant's oral motion for continuance failed to preserve anything for our review. Even if appellant had preserved the issue, the record does not contain a written, sworn motion for continuance required by the code of criminal procedure. *See* TEX. CODE CRIM. PROC. ANN. arts. 29.08, 29.13. Further, the record shows the State designated as witnesses only two police officers, one attorney from the Hunt County Attorney's office, and Harmon on June 28, 2019, almost a month before trial. Therefore, appellant had nearly a month to ascertain Morones was not a witness relied upon by the State and to subpoena Morones or otherwise secure his testimony. *See id.* art. 29.13. We overrule appellant's first issue.

In his second issue, appellant argues the evidence is legally insufficient to support his conviction. We review a challenge to the sufficiency of the evidence on a criminal offense for which the State has the burden of proof under the single sufficiency standard set forth in *Jackson v. Virginia*, 443 U.S. 307 (1979). *Acosta v. State*, 429 S.W.3d 621, 624–25 (Tex. Crim. App. 2014). Under this standard, the relevant question is whether, after viewing the evidence in the light most favorable to the verdict, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. *Clayton v. State*, 235 S.W.3d 772, 778 (Tex. Crim. App. 2011). This standard accounts for the factfinder's duty to resolve conflicts in the testimony, to weigh the evidence, and to draw reasonable inferences from basic facts to ultimate facts. *Id.* Therefore, in analyzing legal sufficiency, we determine whether the necessary inferences are reasonable based upon the combined and cumulative force of all the evidence when viewed in the light most favorable to the verdict. *Id.* When the record supports conflicting inferences, we presume the factfinder resolved the conflicts in favor of the verdict and defer to that determination. *Id.* Direct and circumstantial evidence are treated equally: circumstantial evidence is as probative as direct evidence in establishing the guilt of an actor, and circumstantial evidence alone can be sufficient to establish guilt. *Id.*

Section 550.025 of the transportation code, entitled "Duty on Striking Structure, Fixture, or Highway Landscaping," provides the following:

> (a) The operator of a vehicle involved in an accident resulting only in damage to a structure adjacent to a highway or a fixture or landscaping legally on or adjacent to a highway shall:
>
> (1) take reasonable steps to locate and notify the owner or person in charge of the property of the accident and of the operator's name and address and the registration number of the vehicle the operator was driving; and
>
> (2) if requested and available, show the operator's driver's license to the owner or person in charge of the property.

TEX. TRANSP. CODE ANN. § 550.025.

Here, appellant argues "[t[here is no other reasonable explanation but that Appellant made reasonable efforts to notify the person in charge of the property very soon after the accident" because "there is no way Wal-Mart would have received a check from Appellant's insurance company a mere *one week* after the accident had Appellant not cooperated and given the information to the person in charge of the property of the accident." The record shows Harmon, the Wal-Mart manager, was near the entrance where the accident occurred and saw appellant walking away. Harmon repeatedly called out to appellant, but appellant continued to walk away and did not return before the Wal-Mart closed. Harmon testified appellant's insurance company contacted her after the accident, but appellant "never" contacted her. Harmon testified that, if someone had come in and said he was the owner of the truck, there would have been a record, but there was no such record in this case. The jury was free to believe that only appellant's insurance company, and not appellant, contacted the person in charge of the property. *Clayton*, 235 S.W.3d at 778. Under

these circumstances, we conclude the evidence was legally sufficient to show appellant intentionally or knowingly failed to take reasonable steps to locate or notify the person in charge of the property of the accident. *See Acosta*, 429 S.W.3d at 624–25; *Clayton*, 235 S.W.3d at 778. We overrule appellant's second issue.

We affirm the trial court's judgment.

/David L. Bridges/
DAVID L. BRIDGES
JUSTICE

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JUDGMENT

STONEY THURSBY, Appellant	On Appeal from the County Court at Law No. 2, Hunt County, Texas
No. 05-19-00929-CR V.	Trial Court Cause No. CR1700686. Opinion delivered by Justice Bridges.
THE STATE OF TEXAS, Appellee	Justices Pedersen, III and Evans participating.

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

Judgment entered July 1, 2020