

AFFIRMED and Opinion Filed July 1, 2020



**In The
Court of Appeals
Fifth District of Texas at Dallas**

No. 05-19-01103-CR

**NAYAH SIMONE DILWORTH, Appellant
V.
THE STATE OF TEXAS, Appellee**

**On Appeal from the County Court at Law No. 2
Collin County, Texas
Trial Court Cause No. 002-88676-2018**

MEMORANDUM OPINION

Before Justices Whitehill, Osborne, and Carlyle
Opinion by Justice Whitehill

Appellant was convicted of failure to identify and sentenced to five days in jail. In a single issue, appellant argues that the evidence is insufficient to support her conviction because her detention was unreasonably prolonged after the investigation had concluded and she gave officers the false identifying information during that extended time.

We conclude that appellant was not unlawfully detained. The investigatory detention was based on reasonable suspicion and appellant lied to the officers before they completed their investigation. Accordingly, we affirm the trial court's judgment.

I. BACKGROUND

Officers Taylor Perry and Natasha Mings were dispatched to an Old Navy store to investigate a theft in progress. Appellant and her companions met the suspects' description and were detained.

The officers determined that appellant and her companions had not taken anything, but the store manager requested that the officers issue criminal trespass warnings. Appellant had outstanding warrants and gave the officers false identifying information when they tried to issue a warning.

Appellant was arrested, charged with, and convicted of failure to identify—fugitive from justice, and punishment was assessed at five days in the county jail. Judgment was entered accordingly. Appellant timely appeals from that judgment.

II. ANALYSIS

Appellant challenges the sufficiency of the evidence that she was lawfully detained when she lied to the officers about her identity. According to appellant, the officers had concluded their investigation and unreasonably prolonged her detention, rendering the detention unlawful. As discussed below, we disagree.

A. Standard of Review and Applicable Law

We review the sufficiency of the evidence to support a conviction by viewing all the evidence in the light most favorable to the verdict to determine whether any rational factfinder could have found the essential elements of the crime beyond a reasonable doubt. *Jackson v. Virginia*, 443 U.S. 307, 319 (1979).

This standard gives full play to the factfinder's responsibility to resolve testimonial conflicts, weigh the evidence, and draw reasonable inferences from basic facts to ultimate facts. *Id.* at 319; *Murray v. State*, 457 S.W.3d 446, 448 (Tex. Crim. App. 2015). And the factfinder is the sole judge of the evidence's weight and credibility. *See* TEX. CODE CRIM. PROC. art. 38.04; *Dobbs v. State*, 434 S.W.3d 166, 170 (Tex. Crim. App. 2014).

Thus, when performing an evidentiary sufficiency review, we may not re-evaluate the weight and credibility of the evidence and substitute our judgment for that of the factfinder's. *See Montgomery v. State*, 369 S.W.3d 188, 192 (Tex. Crim. App. 2012). Instead, we determine whether the necessary inferences are reasonable based upon the cumulative force of the evidence when viewed in the light most favorable to the verdict. *Murray*, 457 S.W.3d at 448. We must presume that the factfinder resolved any conflicting inferences in the verdict's favor and defer to that resolution. *Id.* at 448–49. The standard of review is the same for direct and circumstantial evidence cases; circumstantial evidence is as probative as direct evidence in establishing guilt. *Dobbs*, 434 S.W.3d at 170; *Acosta v. State*, 429 S.W.3d 621, 625 (Tex. Crim. App. 2014).

A law enforcement officer is generally justified in conducting a brief detention of an individual to investigate possible criminal behavior—a *Terry* or investigative detention—if the officer can point to specific and articulable facts, which, taken together with rational inferences from those facts, reasonably warrant the intrusion

on the individual's privacy. See *Terry v. Ohio*, 392 U.S. 1, 21 (1968); *Carmouche v. State*, 10 S.W.3d 323, 328 (Tex. Crim. App. 2000). Reasonable suspicion exists if the facts and the rational inferences from those facts, "would lead him to reasonably conclude that a particular person actually is, has been, or soon will be engaged in criminal activity." *Ford v. State*, 158 S.W.3d 488, 492 (Tex. Crim. App. 2005).

In *Terry*, the Court adopted a two-part examination to determine the reasonableness of an investigative detention. The first part of the analysis is to determine whether the officer's action at its inception was reasonable. *Id.* at 16–17. An objective standard is applied to determine whether the intrusion was reasonable. *Id.* at 21. The test is whether the facts available to the officer at the time of the seizure or search would cause a man of reasonable caution to believe the action taken by the officer was appropriate. *Id.*

The second part of a *Terry* inquiry relates to the scope of the detention. The *Terry* court noted that an investigative detention "must, like any other search, be strictly circumscribed by the exigencies which justify its initiation." *Id.* at 25–26. A search reasonable at its inception may violate the Fourth Amendment should it become excessively intense or should it exceed the scope of reasonableness. *Id.* at 18. Thus, "an investigative detention must be temporary and last no longer than is necessary to effectuate the initial purpose of the stop." *Florida v. Royer*, 460 U.S. 491, 500 (1983).

B. Was appellant unlawfully detained?

Appellant was not unlawfully detained. The investigatory detention was based on reasonable suspicion and appellant lied to the officers before they completed their investigation.

A failure to identify—fugitive from justice offense requires that the State prove: (i) a person intentionally gave a false or fictitious name, residence address, or date of birth to a peace officer who lawfully detained her, and (ii) the defendant was a fugitive from justice at the time of the offense. *See* TEX. PENAL CODE § 38.02(b), (d). The State proved these elements beyond a reasonable doubt.

It is undisputed that the officers had reasonable suspicion to investigate the alleged theft. The issue is the point at which that investigation was complete.

Appellant argues that the detention was illegally prolonged because the officers immediately determined that no theft had occurred, and the suspects would not be arrested. According to appellant, the officers' mission was completed when they made that determination.

The officers received a call that three black women in brightly colored wigs were attempting to shoplift by putting merchandise in Old Navy bags they brought into the store. Perry encountered these women, subsequently identified as appellant and her two companions, as they were leaving the store. Perry directed the women to stand in front of the store and asked for identification within a minute from the time he got out of his car.

Perry told the women that the store claimed they had been putting merchandise in bags they brought to the store; the woman denied this. Perry asked if they had any weapons and they said “no.”

Mings went into the store, spoke to an employee, and learned that the women had abandoned the merchandise in the store. She returned outside and told the women she was issuing a criminal trespass warning at the store’s request.

The suspects had no bags other than handbags and had no merchandise that the officers could see. At that point Perry determined that he “personally was not planning to arrest them.” Nonetheless, Perry said that appellant was still detained for investigation as he began working on a criminal trespass complaint.

Perry asked appellant’s first name, and she replied “Maya.” Perry confirmed the spelling and asked appellant’s last name. Appellant said “Samone” and spelled it. She then gave Perry an alleged birthdate. This occurred approximately three minutes into the detention. The information appellant gave was false.

As the officers filled out the warning form, appellant repeated to Mings that her last name was “Simone” and said her middle name was “Nicole.” This occurred less than seven minutes after the detention began.

It is well-established that the purpose of an investigative detention is to determine a person’s identity or maintain the status quo while obtaining more information. *See Balentine v. State*, 71 S.W.3d 763, 768–71 (Tex. Crim. App. 2002). Here, the officers were doing exactly that as they investigated the alleged theft. That

the officers had determined that the women would not be arrested for theft is immaterial. The decision to issue a criminal trespass warning was made almost simultaneously with the officers' decision that they would not arrest for theft. That warning resulted from and was part of the theft investigation, and the officers were in the process of issuing the warning when appellant lied about her identity.

Moreover, to the extent the detention was prolonged, it was because appellant lied. When Mings ran the information appellant gave, she did not get a return. Eventually, Perry obtained a different date of birth and Mings found a photograph of appellant. Then, the officers learned that appellant had outstanding warrants and was a fugitive from justice.

Appellant relies on *Rodriguez v. U.S.*, 575 U.S. 348 (2015) and *St. George v. State*, 237 S.W.3d 720 (Tex. Crim. App. 2007) to argue that the detention was unlawful because it was prolonged beyond the investigation's conclusion. This reliance is misplaced.

In *Rodriguez*, after issuing a ticket, an officer extended the detention for five minutes to wait for a backup officer with a drug dog. *Rodriguez*, 575 U.S. at 352. In *St. George*, officers continued to question a passenger after issuing a citation to the driver of the car. *St. George*, 237 S.W.3d at 722. But here, the questioning occurred in the process of issuing the warnings and before the warnings were complete. And the investigation was not over until the warnings were complete.

Because the lawful investigation was ongoing when appellant lied about her identity, appellant was not unreasonably detained, and the evidence is sufficient to support her conviction. Appellant's sole issue is resolved against her.

III. CONCLUSION

Having resolved appellant's sole issue against her, we affirm the trial court's judgment.

/Bill Whitehill/

BILL WHITEHILL
JUSTICE

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**Court of Appeals
Fifth District of Texas at Dallas**

JUDGMENT

NAYAH SIMONE DILWORTH,
Appellant

No. 05-19-01103-CR V.

THE STATE OF TEXAS, Appellee

On Appeal from the County Court at
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2018.

Opinion delivered by Justice
Whitehill. Justices Osborne and
Carlyle participating.

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

Judgment entered July 1, 2020