the Jasuta / Schulman report

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TIBA's Case of the Week

Court of Criminal Appeals

Case Name: ***Israel Garcia Hernandez v. The State of Texas***

- **OFFENSE**: Evading Arrest or Detention with a Motor Vehicle
- **COUNTY**: Willacy
- **COURT OF APPEALS**: Corpus Christi 2025
- **C/A CITATION**: Unpublished
- **C/A RESULT**: Conviction Affirmed
- **CCA. CASE No**. PD-0176-25 **DATE OF OPINION**: December 19, 2025
- **DISPOSITION**: Court of Appeals Reversed - Acquittal Ordered
- **OPINION**: Judge Lee Finley **VOTE**: 5-1-3
- **TRIAL COURT**: 197th D/C; Hon. Robert Garza
- **LAWYERS**: Mark Bennett & Joseph Moreno (Defense); Arturo Teniente (State)

(**Background Facts**): On March 17, 2020, at 10:16 p.m., a woman called 9-1-1 to report a suspicious four-door Chevrolet Silverado driving at a slow speed in a rural area of Willacy County. At 10:46 p.m., Officer Marcos Garcia arrived at the area the caller described and noticed only Appellant's pickup truck in the vicinity, driving down a dirt road. Appellant's truck was not a four-door Chevrolet Silverado. Garcia turned onto the same dirt road and activated his emergency lights. Appellant did not stop his vehicle in response to the emergency lights and continued driving down the dirt road at the same slow rate of speed. At 10:50 p.m., Appellant stopped and exited his vehicle to open a gate at the entrance of his brother's property. Garcia also exited his vehicle, approached Appellant with his firearm drawn, and asked Appellant to identify himself. Appellant told Garcia his name but did not provide physical identification. Appellant and Garcia argued for approximately five minutes, and, after Garcia unsuccessfully tried to take Appellant down by force, Garcia tased Appellant and arrested him.

[§§ **531.02 Sufficiency of the Evidence / Evading Arrest**]: Appellant did not file a motion to suppress and instead argued that the State could not meet its burden on the "lawful arrest" element. After the State rested, Appellant moved for a directed verdict on the basis that the State had failed to meet its burden to prove the attempted detention was lawful. The trial court denied Appellant's motion. At the jury charge conference, Appellant did not ask for an Article 38.23

instruction. The jury deliberated for several hours and sent eight notes to the trial court during its deliberations, two of which indicated they could not reach a unanimous verdict. The trial court gave the jury an "***Allen***" charge and sent the jury back for further deliberations. The jury ultimately found Appellant guilty as alleged in the indictment. On appeal, Appellant argued that the evidence was insufficient to support his conviction because the State failed to prove beyond a reasonable doubt that the detention was lawful. In an unpublished opinion relying on ***Derichsweiler v. State***, 348 S.W.3d 906 (Tex.Cr.App. 2011)(see ☙, Vol. 19, No. 4; 01/31/2011), the Court of Appeals found that Garcia's testimony was sufficient for a rational juror to "have found that the detention was lawful beyond a reasonable doubt." Specifically, the court of appeals concluded that although Appellant was not driving a Chevrolet Silverado, Garcia's testimony established that Appellant was driving a pickup truck; that Appellant's truck was the only vehicle in the rural area described by the 9-1-1 caller; and that there had been "a lot of incidences of human trafficking" in the area at that time. The court of appeals also pointed to evidence showing that Appellant fled from Garcia's show of authority, both by vehicle and then on foot prior to the physical struggle, from which a juror could infer that Appellant was involved in criminal activity. "[B]ased on the evidence and reasonable inferences from that evidence," the Court of Appeals concluded that the evidence was sufficient for a rational juror to find, beyond a reasonable doubt, that the initial detention was lawful.

Holding: The sufficiency of the evidence is measured against the hypothetically correct jury charge, defined by the statutory elements as modified by the charging instrument. The hypothetically correct jury charge is one that accurately states the law, is authorized by the indictment, does not increase the State's burden of proof, and adequately describes the offense with which the defendant is charged. ***Malik v. State***, 953 S.W.2d 234 (Tex.Cr.App. 1997)(see ☙, Vol. 5, No. 36; 09/15/1997). *** In assessing whether he has reasonable suspicion for a detention, an officer may "draw on [his] own experience and specialized training to make inferences from and deductions about the cumulative information available to [him] that 'might well elude an untrained person.'" *** The information known to the officer at the time of the warrantless detention must support more than a mere hunch. ***Ramirez-Tamayo v. State***, 537 S.W.3d 29, 35 (Tex.Cr.App. 2017)(see ☙, Vol. 25, No. 36; 09/15/2017). *** In sum, the proper standard of review for whether the evidence was sufficient to enable a rational juror to find that Officer Garcia's traffic stop was supported by reasonable suspicion is the same as the one we set forth in ***Long v. State***, 535 S.W.3d 511 (Tex.Cr.App. 2017)(see ☙, Vol. 25, No. 25; 07/03/2017): "*In the context of this case, if we are to make a legal determination of [the reasonableness of a detention], we have to rely upon the jury's verdict. For determinations of historical fact, we apply the traditional standard of review for legal sufficiency to determine what the totality of the circumstances are, deferring to the jury's rational factual determinations and inferences. Then, we evaluate de novo the purely legal question of whether* [the detention was reasonable]." *** (**Contested Evidence**) In reaching its conclusion, the Court of Appeals relied on the following facts: Officer Garcia was dispatched to a rural area of Willacy County to respond to a 9-1-1 call reporting a suspicious vehicle driving slowly; the 9-1-1 caller described a four door Chevrolet Silverado

driving west; when Officer Garcia arrived at the area, he observed a vehicle "close to the mailbox belonging to the address given by the [9-1-1] caller"; there were no other vehicles in the area; when Officer Garcia activated his emergency lights, Appellant "did not stop his vehicle and continued to drive away from Officer Garcia, turning north on a dirt road"; and Appellant ultimately arrived at a gate and stopped his vehicle. Appellant asserts that the Court of Appeals' statements (1) that Officer Garcia observed a vehicle "close to the mailbox belonging to the address given by the [9-1-1] caller"; and (2) that Appellant "did not stop his vehicle and continued to drive away from Officer Garcia, turning north on a dirt road" are not supported by the record. (**Proximity to the Mailbox**) Officer Garcia testified that the vehicle was "in close proximity to the residence" and "in the vicinity that the caller had advised." But this testimony is not supported by the evidence in the record. *** (**Driving Away**) Officer Garcia testified that when he arrived at the scene, he observed Appellant's vehicle already on the dirt road. Officer Garcia followed Appellant and activated his emergency lights after he "had already turned onto that road." The Court of Appeals noted that flight from an officer before the officer has attempted an arrest or detention can be the "key ingredient justifying the decision of a law enforcement officer to take action." But the record here belies the applicability of this scenario to the instant case: Appellant's vehicle was already driving down the dirt road, as Officer Garcia testified, and there was no evidence to suggest he intentionally fled the police vehicle before Officer Garcia activated his emergency lights. Given that these facts are not supported by the record, we do not consider them in our analysis. *** As Officer Garcia himself testified, driving a truck driving slowly on a dirt road at night is not on its own suggestive of criminal activity. Furthermore, Officer Garcia testified that he did not witness Appellant violate any law. And Appellant's conduct was not "bizarre" so as to suggest "someone who was looking to criminally exploit some vulnerability." *** In fact, Officer Garcia testified on cross-examination that there were residences as well as ranch land down the dirt road where the traffic stop was initiated, and that it would not be uncommon for people to go out to that area. Furthermore, Officer Garcia also testified that the road was not the smoothest of roads and that it would not be uncommon for someone to drive slower on an unpaved road like the one Appellant's vehicle was on. *** To the extent that the State relies on Officer Garcia's personal knowledge that this particular area was known for human trafficking, that argument is not persuasive. If that were sufficient, any vehicle driving slowly in an area with known activity of human trafficking could be detained on suspicion that that vehicle was engaged in human trafficking. There were no "specific articulable facts" that Officer Garcia could rely upon to distinguish the ordinary driver on the dirt road from the one possibly engaged in human trafficking. *** And the 9-1-1 call does not move the needle: all it describes is a "suspicious" vehicle but provides no indication that human trafficking was at play. Worse for this theory, the 9-1-1 caller identifies a vehicle that ultimately was not the vehicle that Officer Garcia stopped. Put plainly, the facts necessary to support reasonable suspicion are not in the record. *** Examining the record as a whole, we conclude that the evidence is insufficient to sustain Appellant's conviction for evading arrest. The record is devoid of evidence upon which Officer Garcia could have reasonably concluded that Appellant was, had been, or soon would be engaged in criminal activity.

Concurring / Dissenting Opinions: Judge Jesse McClure concurred, writing separately " to discuss the unique nature of the statute in this case, which effectively requires the jury to make a legal determination." Expressing his belief that determining the lawfulness of a detention or arrest is a task best left to judges, he nevertheless noted that "the fact remains that it is an element of the offense." Addressing the evidence that Appellant's truck was not the one mentioned by the 9-1-1 caller, he also noted that "the 911 caller did not witness any illegal activity." Presiding Judge David Schenck dissented. He argued that, giving "deference to a rational jury's factual findings," the evidence is more than sufficient to show that the arresting officer had reasonable suspicion for the initial traffic stop. Judge Gina Parker also dissented. She, too, would conclude that the information possessed by the arresting officer before the traffic stop was sufficient to confer reasonable suspicion to effectuate the stop. She would find the evidence to be sufficient. Judge Kevin Yeary joined Judge Parker's dissent but also filed a separate dissenting opinion in which he argued that the majority was mistaken to rely on ***Long v. State***, 535 S.W.3d 511 (Tex.Cr.App. 2017)(see ☞, Vol. 25, No. 25; 07/03/2017), as authority for the proposition that our review of the jury's reasonable suspicion determination should be *de novo*, arguing that the Court of Appeals "conducted an appropriate analysis, and this Court should not second-guess it." He would affirm the conviction.

Sidebars

(**David A. Schulman**) Some excellent work by defense counsel, both at trial and on appeal. As the opinion recites, the Court has previously held that a pretrial motion to suppress is not the proper way to challenge an unlawful detention when lawful detention is an element that the State is required to prove. ***Woods v. State***, 153 S.W.3d 413 (Tex.Cr.App. 2005)(see ☞, Vol. 13, No. 2; 01/17/2005). The Court has also held that the Texas exclusionary rule is not appropriate in the context of evading arrest, because evidence of evading does not exist before the attempted arrest. An Article 38.23 instruction is appropriate to exclude illegally obtained evidence of a prior crime. ***Day v. State***, 614 S.W.3d 121 (Tex.Cr.App. 2020)(see ☞, Vol. 28, No. 50; 12/21/2020). This is important because, unlike similar situations, such as where there were fruits developed from the stop, defense counsel would have been required to litigate the matter via a pre-trial motion. Evading is different, something which defense counsel appears to have understood.