



Fourth Court of Appeals
San Antonio, Texas

MEMORANDUM OPINION

No. 04-19-00399-CR

Kurt Wayne **LOPER**,
Appellant

v.

The **STATE** of Texas,
Appellee

From the County Court at Law No. 6, Bexar County, Texas
Trial Court No. 566384
Honorable Wayne A. Christian, Judge Presiding

Opinion by: Sandee Bryan Marion, Chief Justice

Sitting: Sandee Bryan Marion, Chief Justice
Patricia O. Alvarez, Justice
Liza A. Rodriguez, Justice

Delivered and Filed: May 13, 2020

AFFIRMED

Kurt Wayne Loper was convicted by a jury of evading detention, and the trial court sentenced him to time served. On appeal, Loper challenges the sufficiency of the evidence to support his conviction. We affirm.

BACKGROUND

Stephanie Lewis testified she was employed at a CVS drug store which contained a photo kiosk where customers are able to print photographs. After Loper printed photographs at the kiosk, another employee discovered he dropped one of the printed photographs. Lewis described the

photograph as inappropriate and explained it contained a minor child in seductive clothing. Lewis and the other employee then used the system to view the rest of the photographs Loper had printed. Lewis testified the photographs were of minor children from six to fourteen years of age in seductive clothing. Because Lewis was concerned the photographs contained child pornography, she called the police and was instructed to call again if Loper returned.

When Loper returned the following day, Lewis called the police. A uniformed officer, Officer Frances Newsome, entered the store, and Lewis non-verbally acknowledged to the officer that Lewis was the person at the photo kiosk. Lewis did not hear the conversation between Loper and the officer but observed Loper stand up, push the officer, and run. Another officer entered the store and apprehended Loper.

Officer Newsome testified she was dispatched to the drug store in response to a call about an individual possibly in possession of child pornography. She was in full uniform. When Officer Newsome approached Loper, she observed photographs on the screen of the kiosk which she believed contained child pornography. After Officer Newsome told Loper she was investigating possible child pornography, Loper began reaching into his pockets and backpack and gathering his items. Officer Newsome testified Loper's actions made her uncomfortable because Loper could be reaching for a weapon. Officer Newsome told Loper to stop reaching into his bag and to remove his hands from his pockets. Officer Newsome then told Loper to "stay right there." When Loper responded, "I don't want to," Officer Newsome told him she did not care what he wanted and that she would put handcuffs on him. As Officer Newsome tried to grab Loper's arm to handcuff him, he pulled away and started running. Officer Newsome's partner, Detective Julian Rodriguez, was entering the store and heard Officer Newsome radio that Loper was running. Detective Rodriguez tackled Loper by the front entrance, and Detective Rodriguez and Officer Newsome handcuffed him.

In addition to the foregoing testimony, a DVD from Officer Newsome's body-cam which captured her interaction with Loper was admitted into evidence.

Loper was subsequently charged with evading detention, and the jury found him guilty of the offense. Loper appeals.

STANDARD OF REVIEW

In reviewing a challenge to the sufficiency of the evidence, "the relevant question is whether, after viewing the evidence in the light most favorable to the prosecution, *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *Jackson v. Virginia*, 443 U.S. 307, 319 (1979); *see also Zuniga v. State*, 551 S.W.3d 729, 732 (Tex. Crim. App. 2018). "[T]he jurors are the exclusive judges of the facts, the credibility of the witnesses, and the weight to be given to the testimony." *Zuniga*, 551 S.W.3d at 733. Accordingly, we defer "to the responsibility of the trier of fact fairly to resolve conflicts in the testimony, to weigh the evidence, and to draw reasonable inferences from basic facts to ultimate facts." *Jackson*, 443 U.S. at 319.

DISCUSSION

"A person commits [the] offense [of evading detention] if he intentionally flees from a person he knows is a peace officer . . . attempting lawfully to . . . detain him." TEX. PENAL CODE ANN. § 38.04(a). Loper challenges the sufficiency of the evidence to support the jury's finding that Officer Newsome was attempting to lawfully detain him.

"The Fourth Amendment permits a warrantless detention of a person if the detention is justified by reasonable suspicion." *State v. Cortez*, 543 S.W.3d 198, 203 n.9 (Tex. Crim. App. 2018). "Reasonable suspicion exists if the officer has specific articulable facts that, when combined with rational inferences from those facts, would lead him to reasonably suspect that a particular person has engaged or is (or soon will be) engaged in criminal activity." *Id.* at 204

(internal quotation marks omitted). “These facts must show unusual activity, some evidence that connects the detainee to the unusual activity, and some indication that the unusual activity is related to crime.... The test for reasonable suspicion is an objective one that focuses solely on whether an objective basis exists for the detention and disregards the officer’s subjective intent.” *Id.* at 203 n.9 (internal quotation omitted).

“Reasonable suspicion need not arise from the officer’s personal observation, but may be supplied by information acquired from another person.” *Garcia v. State*, 296 S.W.3d 180, 185 (Tex. App.—Houston [14th Dist.] 2009, no pet.). “[T]he reliability of a citizen-informant is generally shown by the very nature of the circumstances under which the incriminating information became known to him or her.” *Brother v. State*, 166 S.W.3d 255, 258 (Tex. Crim. App. 2005). When a citizen-informant provides detailed incriminating information and provides contact information, the citizen-informant “is presumed to speak with the voice of honesty and accuracy.” *State v. Duarte*, 389 S.W.3d 349, 356 (Tex. Crim. App. 2012).

Here, Officer Newsome received a dispatch about an individual possibly being in possession of child pornography based on the information Lewis previously provided to the police. That information provided Officer Newsome with reasonable suspicion to approach Loper to investigate. Upon approaching Loper, Officer Newsome saw photographs on the kiosk screen which she believed contained child pornography. Her observations were additional facts to support reasonable suspicion. Based on Officer Newsome’s statements to Loper during their brief conversation which the jury heard on the DVD from the body-cam video, the jury could infer that Loper was aware Officer Newsome was detaining him. Therefore, the evidence is sufficient to support the jury’s finding that Loper ran from Officer Newsome who was lawfully attempting to detain him.

CONCLUSION

The trial court's judgment is affirmed.

Sandee Bryan Marion, Chief Justice

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