

COURT OF APPEALS OF TEXAS, EIGHTH DISTRICT, EL PASO

Gary McGee v. State

McGee · No. 08-19-00125-CR · Decided December 23, 2020

SUMMARY

The Texas Court of Appeals, Eighth District, affirmed Gary McGee’s conviction for evading arrest or detention with a motor vehicle and the deadly-weapon finding. The court held that the evidence was legally sufficient to establish McGee’s identity, knowledge that the officer was attempting to detain him, and use of the vehicle in a manner capable of causing death or serious bodily injury.

CASE DETAILS

COURT	Court of Appeals of Texas, Eighth District, El Paso
WRITING FOR THE COURT	Yvonne T. Rodriguez; Alley, C.J.; Yvonne T. Rodriguez, Justice; Palafox, Justice
JURISDICTION	Texas
DECIDED	December 23, 2020
DOCKET	08-19-00125-CR
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal from a jury conviction for evading arrest or detention with a motor vehicle and the jury's deadly-weapon finding.
STANDARD OF REVIEW	The court reviewed legal-sufficiency claims by viewing all the evidence in the light most favorable to the verdict and determining whether any rational factfinder could have found the essential elements beyond a reasonable doubt. The reviewing court deferred to the jury's determinations concerning the weight and credibility of the evidence and resolved conflicting inferences in favor of the prosecution.
PRECEDENTIAL VALUE	Unpublished and not designated for publication
PARTIES	Gary McGee v. The State of Texas

TOPICS

criminal procedure

evidence

standard of review

appellate procedure

PRACTICE AREAS

Texas criminal law

criminal appellate law

sufficiency of the evidence

QUESTIONS PRESENTED

1. Whether the evidence was legally sufficient to establish that McGee was the motorist who initially sped past and subsequently evaded the trooper.
2. Whether the evidence was legally sufficient to establish that McGee knew the trooper was attempting to lawfully detain him and intentionally fled.
3. Whether the evidence was legally sufficient to support the finding that McGee used his motor vehicle as a deadly weapon during the felony evasion offense.

HOLDINGS

1. The evidence was legally sufficient for a rational jury to find beyond a reasonable doubt that McGee was the motorist who initially sped past the trooper and later evaded him.
2. The evidence was legally sufficient for a rational jury to find beyond a reasonable doubt that McGee knew the trooper was attempting to detain him and intentionally evaded arrest or detention.
3. The evidence was legally sufficient to support the finding that McGee used his motor vehicle as a deadly weapon because he operated it during the felony in a manner capable of causing death or serious bodily injury.

KEY QUOTATIONS

“A person commits the offense of evading arrest or detention if he intentionally flees from a person he knows is a peace officer attempting lawfully to arrest or detain him and refuses to yield to that lawful show of authority.” (5)

“‘Deadly weapon’ means: (A) a firearm or anything manifestly designed, made, or adapted for the purpose of inflicting death or serious bodily injury; or (B) anything that in the manner of its use or intended use is capable of causing death or serious bodily injury.” (7)

“‘[F]irst, we evaluate the manner in which the defendant used the motor vehicle during the felony; and second, we consider whether, during the felony, the motor vehicle was capable of causing death or serious bodily injury.’” (7)

FACTUAL BACKGROUND

A Texas DPS trooper observed McGee's pickup traveling 90 miles per hour in an 80-mile-per-hour zone and activated his emergency lights to initiate a traffic stop. McGee passed the trooper, increased his speed, continued fleeing for approximately five minutes and thirty-seven seconds, passed five semitrailer trucks, and stopped only after a spike system deflated his tires. McGee's infant child and the child's mother were in the vehicle, and McGee admitted that he saw the emergency lights, discussed stopping with his passenger, and continued driving despite knowing he was being pursued.

PROCEDURAL HISTORY

McGee was indicted for evading arrest or detention with a motor vehicle and abandoning or endangering a child with criminal negligence. After trial, the jury convicted him of evading arrest or detention, acquitted him of the child-endangerment charge, and found that he used a deadly weapon. The trial court assessed three years and six months' confinement, and McGee appealed, challenging the sufficiency of the evidence supporting identity, knowledge of the attempted detention, and the deadly-weapon finding.

DISPOSITION

affirmed

CASES CITED

- Jackson v. Virginia, 443 U.S. 307, 318 (1979)
- Jenkins v. State, 493 S.W.3d 583, 599 (Tex.Crim.App. 2016)
- Wise v. State, 364 S.W.3d 900, 903 (Tex.Crim.App. 2012)
- Williams v. State, No. 02-19-00190-CR, 2020 WL 6326150, *2 (Tex.App.—Fort Worth Oct. 29, 2020, no pet.)
- Queeman v. State, 520 S.W.3d 616, 622 (Tex.Crim.App. 2017)
- Villa v. State, 514 S.W.3d 227, 232 (Tex.Crim.App. 2017)
- Dowdy v. State, No. 08-15-00061-CR, 2016 WL 5806412, *2 (Tex.App.—El Paso Oct. 5, 2016, pet. ref'd)
- Perry v. State, No. 02-19-00262-CR, 2020 WL 479590, at *4 (Tex.App.—Fort Worth Jan. 30, 2020, pet. ref'd)
- Jackson v. State, 718 S.W.2d 724, 725-26 (Tex.Crim.App. 1986)
- Lopez v. State, 415 S.W.3d 495, 497 (Tex.App.—San Antonio 2013, no pet.)
- Horne v. State, 228 S.W.3d 442, 446 (Tex.App.—Texarkana 2007, no pet.)
- Reyes v. State, 480 S.W.3d 70, 77 (Tex.App.—Fort Worth 2015, pet. ref'd)
- Hooper v. State, 214 S.W.3d 9, 17 (Tex.Crim.App. 2007)
- Sierra v. State, 280 S.W.3d 250, 255 (Tex.Crim.App. 2009)
- Drichas v. State, 175 S.W.3d 795, 798 (Tex.Crim.App. 2005)
- Turner v. State, No. 08-11-00318-CR, 2013 WL 5516447 (Tex.App.—El Paso Oct. 2, 2013, no pet.)
- Moore v. State, 520 S.W.3d 906, 907-13 (Tex.Crim.App. 2017)
- Couthren v. State, 571 S.W.3d 786, 793 (Tex.Crim.App. 2019)
- Pointe v. State, 371 S.W.3d 527, 532 (Tex.App.—Beaumont 2012, no pet.)

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