Affirmed and Opinion filed August 9, 2001.

In The

Fourteenth Court of Appeals

NO. 14-00-00039-CR

MARK LEWIS DOBRINSKI, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the 178th District Court
Harris County, Texas
Trial Court Cause No. 804,243

O P I N I O N

Appellant, Mark Dobrinski, was charged with the offense of failure to stop and render aid. TEX. TRANS. CODE ANN. § 550.021 (Vernon 1999). A jury later found appellant guilty and sentenced him to five years confinement in the Institutional Division of TDCJ. Challenging his conviction, appellant now raises four issues for review. We affirm.

Background

Around 9:00 p.m. on January 15, 1999, Ha Nguyen was driving northbound on Interstate 45 when she began experiencing car trouble. Nguyen decided to pull over on

the shoulder of the highway and call for assistance. She called a friend, Chaudhry Riaz. After Riaz arrived at the scene, he determined that a tow truck was needed and called James Cook, a tow truck operator. Upon arrival, Cook positioned his tow truck in front of Nguyen's car. Cook then stood on the driver's side of his truck and began to operate the truck's lift controls. Cook was struck and killed by appellant's vehicle in the far right lane of the Interstate. The driver did not stop and render aid. Subsequently, police questioned appellant about the incident. At trial, appellant admitted that he was driving on I-45 north when his vehicle collided with something, however, he thought it was a construction marker.

Issues Three and Four

In his third and fourth issues for review, appellant alleges that the State's evidence was factually and legally insufficient to sustain a conviction for failing to stop and render aid. Specifically, appellant contends the State failed to prove, beyond a reasonable doubt, that he knew someone sustained personal injury on the night in question. We disagree.

In determining whether the evidence is legally sufficient to support the verdict, we view the evidence in a light most favorable to the verdict, asking whether any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. *Weightman v. State*, 975 S.W.2d 621, 624 (Tex. Crim. App. 1998); *Lane v. State*, 933 S.W.2d 504, 507 (Tex. Crim. App. 1996) (citing *Jackson v. Virginia*, 443 U.S. 307, 318-19). In contrast with legal sufficiency, a review of factual sufficiency requires consideration of the evidence in a neutral light. *Johnson v. State*, 23 S.W.3d 1, 7 (Tex. Crim. App. 2000) (citing *Clewis v. State*, 922 S.W.2d. 126, 134 (Tex. Crim. App. 1996)). We conduct such a review by examining the evidence weighed by the jury that tends to prove the existence of an elemental fact in dispute and compare it with the evidence tending to disprove that fact. *Johnson*, 23 S.W.3d at 7. Under a factual sufficiency review, a court will set aside a verdict only if it is so contrary to the overwhelming weight of the evidence as to be clearly wrong and unjust. *Id*.

The following are elements comprise the offense of failure to stop and render aid offense: (1) a driver of a vehicle (2) involved in an accident (3) resulting in injury or death of any person (4) intentionally and knowingly (5) fail to stop and render reasonable assistance. TEX. TRANS. CODE ANN. §§ 550.021, 550.023 (Vernon 1999); *Allen v. State*, 971 S.W.2d 715, 717 (Tex. App.—Houston [14th Dist.] 1998, no pet.). Before an accused may be held culpable for failing to stop and render aid, he must have knowledge that an accident occurred. *Goss v. State*, 582 S.W.2d 782, 785 (Tex. Crim. App. 1979). Therefore, the culpable mental state required for the offense of failing to stop and render aid is that the accused have knowledge that an accident occurred. *Id*.; *Baker v. State*, 974 S.W.2d 750 (Tex. App.—San Antonio, 1998, pet. ref'd).

At trial, appellant testified that he momentarily fell asleep while driving northbound on Interstate 45. Subsequently he was awakened by a "thump." Appellant noticed damage to the right quarter of his windshield. Also, his right side view mirror was gone. While fully aware that an accident had occurred, appellant testified that he intentionally and knowingly failed to stop because he thought he had struck a construction barrier. Chaudry Riaz, an eyewitness to the accident, testified that the deceased's body was thrown into the middle of the right lane of the highway as a result of the accident and that appellant responded by accelerating his vehicle. Finally, appellant testified that the area where the accident occurred was well lighted and the skies were clear but that he saw nothing when he looked in his rear-view mirror.

Based on this testimony, we find that the State's evidence was legally sufficient to support appellant's conviction because any rational trier of fact could have found the elements of failing to stop and render aid beyond a reasonable doubt. Likewise, the State's evidence was not so contrary to the overwhelming weight of the evidence as to be clearly wrong and unjust. Therefore, the evidence was also factually sufficient to support appellant's conviction. Accordingly, we overrule appellant's third and fourth issues for review.

Issues One and Two

In issues one and two, appellant argues that the State's evidence was legally and factually insufficient to support his conviction because there was no aid he could have reasonably rendered complainant which was not being provided by others. More precisely, appellant contends that the Court of Criminal Appeals' holding in *Bowden v. State* provides a defense to prosecution for failure to stop and render aid when other individuals are present to give aid. *See* 361 S.W.2d 207 (Tex. Crim. App. 1962).

In *Bowden*, the Court found that the State's evidence was insufficient to support a conviction for failure to render aid following an automobile accident when others were already present and providing aid to the injured party. *Id*. at 208. Nevertheless, the facts of *Bowden* are easily distinguishable. The collision in *Bowden* occurred at the home of the injured party and the defendant was aware that the victim's husband was taking her to the hospital. *Id*. at 208. In fact, the injured party's husband had instructed the defendant to remain at the scene until police officers arrived. *Id*. The *Bowden* Court also noted that the defendant's car was disabled and the nearest telephone available was two miles from the scene. *Id*.

In the case at bar, appellant left the scene without determining whether the deceased was going to receive medical assistance. Appellant contends he had no knowledge that the impact caused injury or death. Also, he contends people were on the scene to give aid if necessary. However, this court recently concluded that a motorist involved in a collision is not relieved of the statutory duty to stop and render reasonable assistance despite the presence of others at the scene of the accident. *See Allen*, 971 S.W.2d at 718. Accordingly, the holding in *Bowden*, if it can be properly termed a defense, is not applicable to this case. Having previously found that the State's evidence was legally and factually sufficient to support appellant's conviction, we overrule appellant's first two issues and affirm the judgment of the trial court.

/s/ Charles W. Seymore
Justice

Judgment rendered and Opinion filed August 9, 2001.

Panel consists of Justices Anderson, Hudson, and Seymore.

Do Not Publish — TEX. R. APP. P. 47.3(b).