In The

Court of Appeals

Ninth District of Texas at Beaumont

NO. 09-10-00013-CR

JAMAL HAFEEZ-BEY, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the 411th District Court
Polk County, Texas
Trial Cause No. 16709

MEMORANDUM OPINION

Jamal Hafeez-Bey appeals his felony conviction and four-year sentence for bail jumping and failure to appear. *See* TEX. PEN. CODE ANN. § 38.10(a), (f) (Vernon 2003). The sole issue raised on appeal challenges the legal sufficiency of the evidence to support the conviction. Hafeez-Bey contends the State failed to prove that he intentionally or knowingly failed to appear for arraignment on the charge for which he had been released on $50,000 bail on an instanter bond. We affirm the judgment of the trial court.

On February 13, 2000, Jamal Hafeez-Bey and his brother, Waahid Hafeez-Bey, were arrested in Polk County on a charge of possession of marijuana in an amount of

over five pounds but less than fifty pounds. Their father paid approximately one half of the premium on a $50,000 bond for each of his sons and he signed a promissory note for the remainder of the premium. The bondsman, Sheila Bonin, executed the bonds as surety, Jamal and Waahid each executed a bond as principal, and the men were released. Jamal's signature and fingerprint appear on his bond, which provides that Jamal would appear

> in the town of Livingston instanter and there remain from day to day and term to term of said Court, until discharged by due course of law, then and there to answer said accusation against [him], and shall appear before any court or magistrate before whom the cause may hereafter be pending at any time when, and place where, [his] presence may be required[.]

Bonin testified that she instructs people for whom she makes bond to call in every Monday between the hours of 8:00 a.m. and 4:00 p.m., and further instructs them to call in on Tuesday if they fail to make contact on Monday. Neither Jamal nor Waahid ever called in. During the first month, Bonin communicated with Jamal's parents about payment on the promissory note and the brothers' failure to report, but thereafter Bonin's repeated telephone calls went unanswered. Bonin did speak with Jamal's grandmother, and the grandmother agreed to pass on Bonin's message. Bonin never received any calls or correspondence from Jamal regarding a court setting.

The grand jury handed down its indictment on August 24, 2001, and arraignment was scheduled for September 4, 2001. Bonin testified that the district clerk's office notified her that Jamal and Waahid were due in court on September 4, 2001. Her

standard operating procedure upon being notified of a court setting is to contact the principal by telephone. She makes repeated calls until she contacts someone. If those efforts fail, she sends a letter. Bonin testified that she telephoned Jamal but did not speak with him. Bonin testified that she personally prepared the letter that was mailed to Jamal. Bonin's recollection is that she never received her notice back for either brother. Neither brother appeared for arraignment, and the bond was forfeited. Waahid was arrested some time later, perhaps in June 2002.

Jamal's father, Lateef Hafeez-Bey, testified that Jamal resided with him at the same address in Columbus, Ohio, between February 13, 2000, and September 4, 2001. Lateef claimed that his wife made payments on the bond premium and that his wife would talk to Bonin on the telephone. Lateef testified that he does not recall receiving any mail from the bail bonding company regarding a court setting for September 4, 2001. He did not receive a telephone call or a notice of a court setting. Lateef does not recall Jamal receiving notice of a court setting. He learned that the case was still active when Waahid was arrested and transported from Ohio. Lateef had no knowledge of whether Jamal attempted to contact the bonding company after Waahid's arrest.

In evaluating the legal sufficiency of the evidence, we must view the evidence in the light most favorable to the prosecution and determine whether any rational trier of fact could have found the essential elements of the offense beyond a reasonable doubt. *Jackson v. Virginia*, 443 U.S. 307, 319, 99 S.Ct. 2781, 61 L.Ed.2d 560 (1979). As a

reviewing court, we must defer to the trier of fact on the resolution of conflicting testimony, the weight to be given evidence, and the reasonable inferences drawn from the testimony. *Id.* at 318-19.

Hafeez-Bey contends the prosecution failed to prove that he intentionally or knowingly failed to appear in the 258th District Court of Polk County, Texas, on September 4, 2001. He relies on the lack of documentary evidence, but the witnesses explained the lack of documentation. The district clerk testified that her office neither maintains a copy of the docket sheet following docket call nor retains a file copy of the court coordinator's correspondence regarding court dates. Bonin testified that her file was damaged and discarded after a hurricane.

Hafeez-Bey contends the State failed to prove that he had actual notice of the arraignment setting. He relies on Lateef's testimony that no notice was received at their address. Bonin had the correct contact information, and she testified that a notice was mailed and not returned. The trial court could have found her testimony to be credible and could have drawn an inference that the letter did reach the addressee, but that appellant's father either was mistaken about whether Jamal had received the letter or was not being truthful about it.

Hafeez-Bey contends the bond does not provide adequate notice of his obligation to appear before the 258th District Court on September 4, 2001. The pre-indictment bond notifies Hafeez-Bey that he stands charged with a felony in the District Court of Polk

County, and by signing the bond Hafeez-Bey promises to appear instanter "before said Court." Generally, an instanter bond gives proper notice and, in the absence of evidence of a reasonable excuse, is sufficient to prove an appellant intentionally and knowingly failed to appear in accordance with the terms of his release. *Euziere v. State*, 648 S.W.2d 700, 702 (Tex. Crim. App. 1983). The cases cited by the appellant are distinguishable because in those cases the State produced no evidence of either actual notice of the hearing or conduct by the defendant that was designed to prevent the defendant from receiving actual notice. *See Fish v. State*, 734 S.W.2d 741 (Tex. App.--Dallas 1987, pet. ref'd); *Richardson v. State*, 699 S.W.2d 235 (Tex. App.--Austin 1985, pet. ref'd).

Fish v. State was a prosecution for driving while intoxicated. *Fish*, 734 S.W.2d at 741. The defendant made a pre-indictment instanter bond on which the court in which he would appear was left blank. *Id.* at 741-42. The defendant was later indicted for felony DWI and failed to appear for arraignment. *Id.* at 742. The record contained no evidence that the defendant either had actual notice of the hearing or that he engaged in a course of conduct designed to prevent him from receiving notice. *Id.* at 743. The appellate court held no rational trier of fact could find beyond a reasonable doubt that the defendant intentionally and knowingly failed to appear. *Id.* at 743-44.

This case bears more similarity to *Bell v. State*, a case in which the instanter bond left the name of the court blank, but the record contained other evidence that the defendant was aware that he had to appear in court. *Bell v. State*, 63 S.W.3d 529, 532

(Tex. App.--Texarkana 2001, pet. ref'd). After the defendant failed to appear, he did not return to the county voluntarily, but had to be arrested. *Id.* at 533. The reviewing court found that a rational jury could have found that the defendant intentionally or knowingly failed to appear. *Id.*

In *Richardson v. State,* the court coordinator testified that she did not notify the defendant directly but sent the notice to the surety. *Richardson,* 699 S.W.2d at 237. The surety testified that he told the defendant that the surety would notify him of any court dates, that the surety did not receive the court coordinator's notice, and that the surety did not notify the defendant of the court date. *Id.* Because it was undisputed that the defendant did not have notice of the hearing after having been assured he would be notified of any court dates by the bondsman, and there was no evidence that the defendant engaged in conduct designed to prevent him from receiving notice, the appellate court held no rational trier of fact could find beyond a reasonable doubt that the defendant intentionally and knowingly failed to appear. *Id.* at 237-38.

This case more closely resembles *Solomon v. State,* a case in which the court held the evidence was legally sufficient to establish an intentional or knowing failure to appear. *Solomon v. State,* 999 S.W.2d 35, 38 (Tex. App.--Houston [14th Dist.] 1999, no pet.). The defendant's former lawyer testified that the notice of the setting came back in the mail, but the lawyer did speak with a family member, and the court coordinator

testified that her letter to the defendant was not returned. *Id.* at 37-38. Like *Solomon,* the trier of fact in this case heard testimony that a written notice was mailed and not returned.

The culpable mental state for bail jumping and failure to appear may be established through evidence that the defendant intentionally or knowingly engaged in a course of conduct designed to prevent his receiving notice. In one case, the defendant testified that he did not receive notice of the hearing because he was a transient. *Etchison v. State,* 880 S.W.2d 191, 192-93 (Tex. App.--Texarkana 1994, no pet.). The defendant's bondsman testified that after he made bond he never saw the defendant again, and there was no evidence that the defendant ever tried to contact the court, the bondsman, or his attorney to determine the status of the case. *Id.* The reviewing court held the evidence was sufficient to establish that the defendant intentionally or knowingly engaged in a course of conduct designed to prevent his receiving notice. *Id.* at 193.

In another case, a defendant released on an instanter bond could not be found at the address on the bond. *Vanderhorst v. State,* 821 S.W.2d 180, 181-82 (Tex. App.--Eastland 1991, pet. ref'd). On appeal he argued that his lack of notice constituted a reasonable excuse for his failure to appear. *Id.* at 182. The reviewing court held that the defendant's failure to provide his forwarding address provided sufficient evidence for the jury to find that he intentionally or knowingly engaged in a course of conduct which would prevent him from receiving notice. *Id.*

In *Walker v. State*, the surety testified that after she obtained the defendant's release on an instanter bond, the defendant never again contacted her. *Walker v. State*, 291 S.W.3d 114, 119 (Tex. App.--Texarkana 2009, no pet.). The surety mailed an arraignment notice and confirmed its receipt with a family member. *Id.* The reviewing court held the trier of fact could reject the defendant's testimony that he did not receive the notice and affirmed the judgment. *Id.* at 120.

Similarly, in *Burns v. State*, the bondsman on the defendant's instanter bond testified that the defendant ignored the bondsman's instructions to call him every Monday. *Burns v. State*, 958 S.W.2d 483, 488 (Tex. App.--Houston [14th Dist. 1997, no pet.). A notice of the court date was mailed to the defendant and was not returned. *Id.* The surety could not contact the defendant by calling the telephone number the defendant provided. *Id.* The reviewing court found legally sufficient evidence of the defendant's intentional or knowing failure to appear. *Id.*

Viewed in the light most favorable to the prosecution, the surety instructed Hafeez-Bey to contact her every week, yet Hafeez-Bey never contacted the surety. After the first month, the surety's telephone calls were not answered at the appellant's residence. A notice mailed to appellant's address was not returned undelivered. The appellant's behavior was not consistent with an intent to appear, and the trial court could rationally disregard his father's testimony regarding receipt of written notice. Hafeez-Bey's state of mind can also be inferred from his conduct after his failure to appear, as he

never contacted anyone about the charges even after his brother had been apprehended on the same charge. The trial court conducting the bench trial could rationally find that Hafeez-Bey intentionally or knowingly engaged in a course of conduct designed to prevent him from receiving notice of the court appearance required by the instanter bond, and could rationally find that Hafeez-Bey intentionally or knowingly failed to appear after having been released on bond. We overrule the issue and affirm the judgment of the trial court.

AFFIRMED.

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STEVE McKEITHEN
Chief Justice

Submitted on July 13, 2010
Opinion Delivered August 18, 2010
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Before McKeithen, C.J., Gaultney and Kreger, JJ.