Affirmed and Opinion filed February 24, 2000.

In The

Fourteenth Court of Appeals

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NO. 14-99-00115-CR

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KENNETH ALAN WILEY, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the 230th District Court
Harris County, Texas
Trial Court Cause No. 785,651

O P I N I O N

Appellant was charged by indictment with the offense of aggravated assault. The indictment alleged two prior felony convictions for the purposes of enhancing the punishment range. Appellant waived his right to trial by jury, proceeded to trial before the court and was convicted of the charged offense. Appellant pled true to the enhancement allegations, the trial court found the allegations true and assessed punishment at thirty years confinement in the Texas Department of Criminal Justice—Institutional Division. In his sole point of error, appellant contends the evidence is factually insufficient to support the conviction. We affirm.

I. Standard of Review

We begin by determining the appropriate standard of appellate review for resolving a factual sufficiency challenge. To determine whether the evidence is *legally* sufficient to sustain a conviction we employ the standard of *Jackson v. Virginia* and ask "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." 443 U.S. 307, 319, 99 S.Ct. 2781, 2789, 61 L.Ed.2d 560 (1979). However, to determine whether the evidence is *factually* sufficient we employ the standard announced in *Clewis v. State* and view all of the evidence without the prism of "in the light most favorable to the prosecution" and reverse the conviction only if it is so contrary to the overwhelming weight of the evidence as to be clearly wrong and unjust. 922 S.W.2d 126, 129 (Tex. Crim. App. 1996).

The *Clewis* standard was thoroughly discussed in *Cain v. State*, 958 S.W.2d 404 (Tex. Crim. App. 1997), which stressed the importance of the three principles that must guide a court of appeals when conducting a factual sufficiency review. The first principle is deference to the fact finder. A court of appeals may not reverse the fact finder's verdict simply because it disagrees with the result. Rather the court of appeals must defer to the fact finder and may find the evidence factually insufficient only where necessary to prevent manifest injustice. *Id*. at 407. The second principle requires the court of appeals to provide a detailed explanation supporting its finding of factual insufficiency by clearly stating why the conviction is manifestly unjust, shocks the conscience or clearly demonstrates bias. *Id*. at 407. The court should state in what regard the contrary evidence greatly outweighs the evidence in support of the verdict. *Id*. at 407. The third principle requires the court of appeals to review all of the evidence. The court must consider the evidence as a whole, not viewing it in the light most favorable to either party. *Id*. at 408.

II. Evidentiary Review

The following evidence is not in dispute. Appellant left a suitcase at the home of Greg Pickle who was one of the complainant's roommates. Approximately two weeks later, appellant called the residence and asked permission to retrieve the suitcase. As Pickle was

asleep at the time of the call, the complainant took the suitcase and took it to the front porch where appellant was standing. A short time later, appellant cut the complainant twice with a sharp object.

The dispute arises from the testimony of the complainant and appellant. The complainant stated that after taking the suitcase to the porch, appellant asked to see Pickle. The complainant responded that Pickle was asleep and did not want to talk with appellant. Appellant began "thrashing" his arms and reached into his pocket. Appellant then struck the complainant, cutting his face. The complainant later realized he had also received a cut to the side of his abdomen. The cuts left two scars. The complainant did not assault appellant, nor provoke the assault by appellant. Following his arrest, appellant called the complainant and asked him to drop the charges. The complainant recorded the conversation and the recording was admitted into evidence.

Appellant testified that when he arrived to retrieve his suitcase, the complainant demanded payment of $100.00 before releasing the suitcase. The complainant then grabbed appellant and would not release him. The assault by the complainant placed appellant in fear of his life and instilled in him the belief that he was going to be murdered or robbed. This fear led appellant to cut the complainant with a knife and flee. Additionally, appellant admitted having two prior felony convictions.

The primary import of the remaining testimony offered by the State dealt with the arrest of appellant at a nearby tacqueria. At the time of his arrest, appellant was in possession of a suitcase and a small paring knife with a 3 to 3 ½ inch blade. In the opinion of one officer, the knife was considered a deadly weapon. The knife was lost, never recovered and, therefore, not available as evidence at trial. Additionally, when appellant was arrested, the arresting officer did not observe any injuries to appellant.

George Pickle testified that the complainant taunted appellant when he came to retrieve his suitcase. Pickle further testified that the complainant's reputation for being truthful, peaceful and law-abiding was bad.

III. Analysis

We read appellant's brief as advancing two primary arguments. First, the complainant was not credible. Second, appellant acted in self defense. We will consider these arguments jointly.

We are mindful that we may not reverse a fact finder's decision simply because we disagree with the result; we must be deferential to the trial court's verdict. *See Goodman v. State*, ___ S.W.3d ___ No. 14-97-01027-CR; (Tex. App–Houston [14th Dist.] November 10, 1999, pet. filed December 15, 1999) (citing *Cain*, 958 S.W.2d at 407). In this vein, we recognize the trial court, as the judge of the credibility of the witnesses, was free to accept the complainant's version of the events and reject the version offered by appellant. *See Goodman*, slip op. at 24, (citing *Gaffney v. State*, 940 S.W.2d 682, 685 (Tex. App.–Texarkana 1996, pet. ref'd)).

Additionally, we are mindful that in self defense cases, the State bears the burden of persuasion in disproving the evidence of self-defense, but that it does not have the burden of production, "i.e., one which requires the State to affirmatively produce evidence refuting the self-defense claim." *See Saxton v. State*, 804 S.W.2d 910, 913 (Tex. Crim. App. 1991). Therefore, a guilty verdict is an implicit finding rejecting the defendant's self-defense theory. *See id.*, 804 S.W.2d at 914.

Here the trial court, by its verdict, chose to accept the complainant's version of the events. The verdict, therefore, necessarily rejected appellant's self-defense claim. The remaining question is whether this verdict is so contrary to the overwhelming weight of the evidence as to be clearly wrong and unjust. *See Clewis*, 922 S.W.2d at 129.

The evidence is not disputed that appellant assaulted the complainant. The only dispute is the reason for the assault. While the testimony of the complainant was attacked and perhaps suspect, we cannot find that it was not credible. As noted above, the credibility determination was for the trial court. Moreover, the injuries sustained by the complainant were corroborated by the medical staff who arrived at the residence and transported the complainant to the

emergency room. Additionally, on the issue of credibility, we note that appellant admitted having two prior felony convictions. Therefore, the trial court would have been warranted in finding appellant's testimony not credible.

Finally, while the trial court was free to accept appellant's claim of self-defense, we do not find overwhelming evidence supporting this claim. Indeed, there is no evidence beyond the testimony of appellant . While Pickle stated that he heard the complainant taunt appellant, he did not see what actually occurred. Additionally, the arresting officer did not observe any injuries to appellant. Finally, we note the tape recorded conversation of appellant asking the complainant to drop the charges.

When the record evidence is viewed as a whole, not viewing it in the light most favorable to either party, we do not find the overwhelming weight of the evidence renders the trial court's verdict clearly wrong and unjust. Therefore, we hold the evidence is factually sufficient. The sole point of error is overruled.

The judgment of the trial court is affirmed.

/s/ Charles F. Baird
Justice

Judgment rendered and Opinion filed February 24, 2000.
Panel consists of Chief Justice Murphy and Justices Wittig and Baird.[1]
Do Not Publish — TEX. R. APP. P. 47.3(b).

[1] Former Judge Charles F. Baird sitting by assignment.