Affirmed and Opinion filed October 21, 1999.

In The

Fourteenth Court of Appeals

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NO. 14-97-00858-CR

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DONNELL WHITE, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the 263rd District Court
Harris County, Texas
Trial Court Cause No. 757,639

O P I N I O N

Donnell White (Appellant) was indicted for the second degree felony offense of aggravated assault. *See* TEX. PENAL CODE ANN. §22.02(a)(2) (Vernon 1994). Appellant pleaded not guilty and was tried by a jury. After the jury found him guilty, Appellant was sentenced by the trial court to twenty-five years' confinement in the Institutional Division of the Texas Department of Criminal Justice. *See* TEX. PENAL CODE ANN. § 12.42(d) (Vernon 1994). On appeal to this Court, Appellant assigns two points of trial court error, contending that (1) the evidence is legally and factually insufficient to support his conviction, and (2) the

trial court erred in precluding him from cross-examining the victim about "her theft of drugs." We affirm.

In his first point of error, Appellant maintains that the evidence was legally and factually insufficient to support his conviction. Generally, in reviewing a challenge to the legal sufficiency of the evidence, we view the evidence in the light most favorable to the verdict. *Whitaker v. State*, 977 S.W.2d 595, 598 (Tex. Crim. App. 1998) (citing *Jackson v. Virginia*, 443 U.S. 307, 319, 99 S.Ct. 2781, 2789, 61 L.Ed.2d 560 (1979)). We determine only whether any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. *Id.* (citing *Jackson*, 443 U.S. at 319, 99 S.Ct. at 2789).

However, here, Appellant failed to identify in what respect the evidence was legally insufficient. Moreover, he concedes in the argument portion of his brief that "viewing the evidence under the legal sufficiency standard . . . the court could conclude that a rational jury could have found the appellant guilty." Consequently, Appellant's challenge to the legal sufficiency of the evidence presents nothing for review. *See McFarland v. State*, 928 S.W.2d 482, 509 n.25 (Tex. Crim. App. 1996); *Hutto v. State*, 977 S.W.2d 855, 858 (Tex.App.–Houston [14th Dist.] 1998, no pet.) (where no argument is presented on how the evidence is insufficient under any standard of review, nothing is preserved for review).

In reviewing the factual sufficiency of the evidence, we view all the evidence without the prism of "in the light most favorable to the prosecution" and will set aside the verdict only if it is "so contrary to the overwhelming weight of the evidence as to be clearly wrong and unjust." *Whitaker*, 977 S.W.2d at 598.

Appellant asserts that he was acting in self-defense when he inflicted Ms. White's injuries. He contends that Ms. White grabbed him by his genitals "with a death grip" and "would not let go." Appellant testified that Ms. White was gripping so tightly that "he was almost ready to pass out when he hit her once and then a second time—neither of which dissuaded her to release her death grip." He maintains that it "was not until he located a knife

on the floor which he brandished at her that she released the death grip." Appellant testified that "[his] excruciating pain . . . caused him to grab the knife."

Ms. White testified that after Appellant "jerked" her inside his residence, he dragged her by her hair to a bedroom. There, Ms. White testified that Appellant displayed a machete knife and a kitchen utensil knife, and after punching her several times in her face with his fists, Appellant threatened to cut her throat with the latter knife. She testified that Appellant said to her, "If you just say another—'g-d' word I'll just push [the knife-blade] all the way through your neck." Ms. White testified that she then grabbed Appellant's crotch, which caused him to release her. After she was able to leave Appellant's residence, Ms. White reported the offense to her daughter and the Houston Police Department.

Kimberlynn Dorsey testified that she received a telephone call from her mother, Ms. White, requesting her to "come over to her house." Ms. Dorsey complied, and after she arrived at her mother's house, she found her mother in a battered condition. Ms. Dorsey testified that her mother's eyes and nose were swollen and bleeding. She also observed a cut on her mother's right cheek. Ms. Dorsey drove her mother to St. Joseph's Hospital, where she was admitted and remained for more than two days.

When reviewing Appellant's factual sufficiency challenge, we compare the evidence which tends to prove he affirmatively used a knife in his assault of Ms. White with the evidence tending to prove the contrary. *See Wade v. State*, 951 S.W.2d 886, 892 (Tex.App.–Waco 1997, pet. ref'd). In this comparison, we must give due deference to the jury's conclusions regarding the weight and credibility of the evidence. *See id.*

We observe that in convicting Appellant, the trier of fact implicitly rejected his claim that he was acting in self-defense to protect himself from being injured by Ms. White. *See Villatoro v. State*, 897 S.W.2d 943, 945 (Tex.App.–Amarillo 1995, pet. ref'd). This finding is supported by the evidence. The trier of fact was free to assign greater weight to the testimony of the State's witnesses. *See id.*; *see also Whitaker*, 977 S.W.2d at 598. Specifically, Ms. White's testimony, if credited, established no basis for Appellant to believe

that Ms. White's purpose in grabbing Appellant's genitals was to offensively inflict a serious injury to Appellant so as to force him to threaten her life by cutting her throat with a knife. *See id.*

From the record presented for our review, we cannot conclude that the jury's verdict is against the great weight of the evidence so as to be clearly wrong and unjust. *See Whitaker*, 977 S.W.2d at 598; *Wade*, 951 S.W.2d at 892; *Villatoro*, 897 S.W.2d at 945. Appellant's first point of error is overruled.[1]

In his second point of error, Appellant contends that the trial court erred in not allowing him to impeach Ms. White on cross-examination with allegations that she was dismissed from her job as a pharmacy technician because she was stealing drugs for Appellant to sell. In responding to the State's objection to this proffered testimony at trial, out of the presence of the jury, Appellant contented that it "[g]oes to her credibility and whether . . . anything she says can indeed be believed and trusted." The trial court sustained the State's objection.

We review the trial court's ruling on the admissibility of testimony or evidence for abuse of discretion. *Moreno v. State*, 858 S.W.2d 453, 463 (Tex. Crim. App. 1993).

Rule 608 provides: "Specific instances of the conduct of a witness, for the purpose of attacking or supporting the witness' credibility, other than conviction of crime as provided in Rule 609, may not be inquired into on cross-examination of the witness nor proved by extrinsic evidence." TEX. R. EVID. 608(b). Other than conviction of a crime, a witness' character for truthfulness may not be impeached by proof of specific instances of conduct. *Ramirez v. State*, 802 S.W.2d 674, 676 (Tex. Crim. App. 1990). Rule 608(b) is very restrictive and allows for no exceptions. *Id.*

The trial court did not abuse its discretion in sustaining the State's objection. *See Moreno*, 858 S.W.2d at 463. Appellant sought to impeach the credibility and trustworthiness

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[1] Although we thoroughly reviewed Appellant's first point of error, we note that the argument portion of his brief contains no citations to the record nor citations to any authority. Appellant's brief violates Rule 38.1. *See* TEX. R. APP. P. 38.1(h) (West 1998).

of Ms. White's testimony with a specific instance of conduct, namely on an allegation that she was dismissed from her job for theft of drugs. Rule 608(b) forbids the impeachment of a witness' credibility with specific instances of conduct. *See Ramirez*, 802 S.W.2d at 676. Appellant's second point of error is overruled.[2]

The judgment is affirmed.

PER CURIAM

Judgment rendered and Opinion filed October 21, 1999.
Panel consists of Amidei, Edelman, and Wittig.
Do Not Publish — TEX. R. APP. P. 47.3(b).

[2] To the extent that Appellant argues in his brief that the testimony was relevant to show Ms. White's motive or bias for testifying, we decline to address this contention because it was not presented to the trial court. *See Gonzales v. State*, 929 S.W.2d 546, 550 (Tex.App.–Austin 1996, pet. ref'd); *see also* TEX. R. APP. P. 33.2.