Affirmed and Opinion filed December 9, 1999.

In The

Fourteenth Court of Appeals

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NO. 14-97-00855-CR

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VICTOR RODRIGUEZ, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the 337th District Court
Harris County, Texas
Trial Court Cause No. 740,472

O P I N I O N

A jury found appellant guilty of assault on a peace officer and assessed punishment at probation for seven years and a fine of $2,500.00. In two points of error, appellant claims the evidence is legally and factually insufficient to support the conviction. We affirm.

BACKGROUND

Appellant was arrested for suspicion of driving while intoxicated. When appellant was transported to the jail facility, he was belligerent and shouting profanities. After complainant, a certified peace officer employed as a jailer, secured appellant's fingerprints, appellant struck complainant in the face with his hand.

SUFFICIENCY OF THE EVIDENCE

Legal Sufficiency

In his first point of error, appellant contends the evidence was legally insufficient to support the conviction because there was no showing at trial that the complainant suffered physical pain, illness, or any impairment of his physical condition as a result of being struck in the face by appellant. When an appellant challenges both the legal and factual sufficiency of the evidence, an appellate court must first determine whether the evidence adduced at trial was legally sufficient to support the verdict. *See Clewis v. State,* 922 S.W.2d 126, 133 (Tex. Crim. App. 1996). In doing so, we must review all of the evidence in the light most favorable to the verdict to determine whether any rational trier of fact could have found the essential elements of the offense beyond a reasonable doubt. *See Jackson v. Virginia,* 443 U.S.307, 319 (1979); *Mason v. State,* 905 S.W.2d 570, 574 (Tex. Crim. App. 1995).

The trier of fact is the exclusive judge of the credibility of witnesses and the weight to be given their testimony. *See Jones v. State,* 944 S.W.2d 642, 647 (Tex. Crim. App. 1996). We will not reevaluate the weight and credibility of the evidence; instead, we act only to ensure the jury reached a rational decision. *See Muniz v. State,* 851 S.W.2d 238, 246 (Tex. Crim. App. 1993). If there is evidence to establish the defendant is guilty beyond a reasonable doubt, and the trier of fact believes that evidence, we cannot reverse the judgment on insufficient evidence grounds. *See Cabrales v. State,* 932 S.W.2d 653, 656 (Tex. App.–Houston [14th Dist.] 1996, no pet.). We are not to re-weigh the evidence as a thirteenth juror. *See Washington v. State,* 902 S.W.2d 649, 653 (Tex. App.–Houston [14th Dist.] 1995, pet. ref'd). Reconciliation of conflicts in the evidence is within the exclusive province of the fact finder. *See Jones,* 944 S.W.2d at 647. This standard of review applies equally to direct and circumstantial evidence cases. *See King v. State,* 895 S.W.2d 701, 703 (Tex. Crim. App. 1995).

Appellant claims the evidence is legally insufficient to show that the complaining witness sustained "bodily injury." A person commits the offense of assault if the person "intentionally, knowingly, or recklessly causes bodily injury to another." TEX. PENAL CODE ANN. § 22.01(a)(1) (Vernon 1994). "Bodily injury" is defined as "physical pain, illness, or any impairment of physical condition." TEX. PENAL CODE ANN. § 1.07(a)(8) (Vernon 1994). The terms "physical pain," "illness," and "impairment of physical condition" are terms of common usage, and when construed "according to the fair import of their terms," in the context used in Section 1.07(a)(8), *supra,* are not "so vague that men of common intelligence must necessarily guess at [their] meaning and differ as to their application." *See Ramirez v. State,* 518 S.W.2d 546, 547 (Tex. Crim. App. 1975), (*citing Baker v. State,* 478 S.W.2d 445 (Tex. Crim. App.1972)). A careful review of the record reveals that appellant is correct in his assertion that there was no direct evidence of "pain," "illness," or "impairment of physical condition."

A conviction, however, must be affirmed if the evidence, when viewed in the light most favorable to the verdict, with all reasonable inferences and credibility choices made in support of it, is such that any rational trier of fact could have found the essential elements of the crime proven beyond a reasonable doubt. *See Jackson v. Virginia,* 443 U.S. 307 at 319. Indeed, a jury is free to use its common sense and apply common knowledge, observation, and experience gained in the ordinary affairs of life when giving effect to the inferences that may reasonably be drawn from the evidence. *Wawrykow v. State,* 866 S.W.2d 87, 88-89 (Tex. App.–Beaumont 1993, pet. ref'd). Furthermore, the definition of "bodily injury" in the penal code is purposefully broad and encompasses even relatively minor physical contact so long as such contact constitutes more than offensive touching. *See id.; (citing Lane v. State,* 763 S.W.2d 785, 786 (Tex. Crim. App. 1989) (*rev'd on other grounds,* 828 S.W.2d 764 (Tex. Crim. App.1992).

We look to the totality of the circumstances surrounding the incident in order to determine if the jury could have found the element of injury proven beyond a reasonable doubt. *See Criner v. State,* 860 S.W.2d 84, 86-87 (Tex. Crim. App. 1993). The record before us reveals that appellant was very belligerent, profane and uncooperative as complainant attempted to fingerprint him. Complainant testified that appellant struck him in the lower portion of his face with his hand, causing a cut or scrape to the chin, a cut on the neck, and red marks and swelling on the left side of his face. The jury also had before it a

photograph of the complainant's injuries. Another police officer testified that he observed complainant to have scratches on his neck and lower lip following the attack, which appeared more red and irritated in person than is reflected in the photograph.

In arriving at its verdict, the jury is not confined to a consideration of the palpable facts in evidence, but may draw reasonable inferences and make reasonable deductions therefrom. *See Goodin v. State*, 750 S.W.2d 857, 859 (Tex. App.–Corpus Christi 1988, pet. ref'd), (*citing* 23 C.J.S. Criminal Law § 902 (1961). People of common intelligence understand both physical pain and some of the natural causes of pain. *See id.* It is a reasonable inference men of common intelligence could certainly make that complainant's cuts, scrapes, red marks and swelling caused him "physical pain" according to the fair import of the term as used in §1.07(a)(8) of the penal code. The fact of a physical intrusion on the body in the form of a cut or scrape can itself be sufficient evidence of the associated physical pain necessary to show "bodily injury." *See id., (citing Bolton v. State*, 619 S.W.2d 166, 167 (Tex. Crim. App. 1981). Viewing all the evidence in the light most favorable to the verdict, we determine the jury, as the trier of fact, could find beyond a reasonable doubt that appellant caused bodily injury to a peace officer by striking him in the face. *See Wawrykow*, 866 S.W.2d at 90. The evidence is legally sufficient to support the conviction. Appellant's first point of error is overruled.

Factual Sufficiency

Appellant claims in his second point of error that the evidence was factually insufficient to support his conviction because there was no showing at trial of bodily injury as required by §22.01(a)(1) of the penal code. When viewing the factual sufficiency of the evidence, we review all the evidence without the prism of "in the light most favorable to the prosecution" and set aside the verdict only if it is "so contrary to the overwhelming weight of the evidence as to be clearly wrong and unjust." *See Clewis v. State*, 922 S.W.2d 126, 129 (Tex. Crim. App. 1996). Although we are authorized to disagree with the verdict, a factual sufficiency review must be appropriately deferential so as to avoid substituting our judgment for that of the trier of fact. See *id.* at 133.

The evidence presented at trial showed that appellant was aggressive and profane upon arrival at the jail. After complainant fingerprinted appellant and was leading appellant to a bench to be handcuffed, appellant swung his right hand toward complainant, striking complainant in the lower portion of his face. A scuffle ensued as complainant attempted to subdue appellant. Complainant testified that as a result of appellant's actions, he received a small cut or scrape to the chin, a cut on the neck, and red marks and swelling on the left side of his face.

A photograph of complainant's injuries, State's Exhibit Number 6, was admitted in evidence. Another officer, Garcia, testified that he observed complainant on the night of the offense with scratches on his neck and lower lip. Garcia noted that the wounds to complainant appeared more severe in person than they appear in State's Exhibit Number 6.

Appellant testified in his own defense. He stated that complainant and another deputy assaulted him while he was being fingerprinted. Appellant denied hitting anyone.

After examining all of the evidence impartially and giving deference to the jury's verdict, we conclude that the jury's verdict is not so contrary to the overwhelming weight of the evidence as to be clearly wrong and unjust. The jury had before it testimony concerning various cuts and scratches as well as swelling caused by the appellant's blow to the complainant's face. Also admitted in evidence was State's Exhibit 6, a photograph depicting the wounds to the complaining witness. The jury was entitled to draw appropriate inferences from the evidence, and the inference that the blow by appellant caused pain and thus bodily injury to the victim was reasonable. *See Wawrykow v. State*, 866 S.W.2d 96, 100 (Tex. App.–Beaumont 1993), (holding that a rational fact-finder could have inferred that blows from fists caused physical pain in the absence of testimony in that regard).

The trier of fact is charged with judging the credibility of the witnesses and the weight to be given their testimony. *See Jones v. State*, 944 S.W.2d 642, 647 (Tex. Crim. App. 1996). Presented with conflicting testimony regarding the striking of blows by appellant, the jury was clearly entitled to believe the testimony of the police officers and to disbelieve appellant's testimony. *Id.* We hold the evidence was factually sufficient to support the jury's verdict and overrule appellant's second point of error.

The judgment of the trial court is affirmed.

/s/ Maurice Amidei
Justice

Judgment rendered and Opinion filed December 9, 1999.

Panel consists of Justices Amidei, Edelman and Wittig.

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