Opinion filed July 13, 2017

In The

Eleventh Court of Appeals

No. 11-16-00236-CR

MOISES ERNESTO PEREZ, Appellant
V.
THE STATE OF TEXAS, Appellee

On Appeal from the County Court at Law No. 2
Midland County, Texas
Trial Court Cause No. 154159

M E M O R A N D U M O P I N I O N

The jury found Moises Ernesto Perez guilty of assault.[1] Appellant pleaded "true" to an enhancement allegation of a prior felony conviction,[2] and the trial court assessed punishment at confinement for ninety days. On appeal, Appellant asserts

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[1]*See* TEX. PENAL CODE ANN. § 22.01(a)(1) (West Supp. 2016).

[2]*See id.* § 12.43 (West 2011).

that the State adduced insufficient evidence for the jury to find him guilty of the offense of assault. We affirm.

I. *The Charged Offense*

Appellant was charged by information with assault. In the information, the State alleged that Appellant assaulted Christina Deleon, Appellant's wife, causing bodily injury on or about December 30, 2015. A person commits the offense of assault if he "intentionally, knowingly, or recklessly causes bodily injury to another, including the person's spouse."[3] The State also alleged Appellant's prior felony conviction as a punishment enhancement.

II. *Evidence at Trial*

Appellant, Christina, and three children traveled from their home in Sinton, Texas, to visit family friends in Midland, Texas. One evening, while at the friends' home in Midland, Christina attempted to put their baby to bed. Christina's stepdaughter confronted her and tried to take the baby from her. The owner of the home entered the bedroom to attempt to separate Christina and the stepdaughter. At that point, Appellant then entered the bedroom, grabbed Christina by the neck, tackled her, and forced her onto the bed. As Appellant forced Christina onto the bed, she still held the baby and shielded the child with her body. Witnesses testified that Appellant's arms moved in a manner that indicated to them that he had struck Christina multiple times, and Christina reacted as if she had been hit. The homeowner managed to pull Appellant off Christina. The homeowner's wife and Christina both called 9-1-1. Police were dispatched, and once they arrived, they interviewed witnesses and took pictures of marks on Christina's neck and under her

[3]*See id.* § 22.01(a)(1).

eye. The police also examined Appellant's hands but found no indication of injuries on his body. Police then arrested Appellant.

III. *Standard of Review*

The standard of review for sufficiency of the evidence is whether any rational jury could have found Appellant guilty beyond a reasonable doubt. *Jackson v. Virginia*, 443 U.S. 307, 318 (1979); *Brooks v. State*, 323 S.W.3d 893, 912 (Tex. Crim. App. 2010); *Hooper v. State*, 214 S.W.3d 9, 13 (Tex. Crim. App. 2007). We review the evidence in the light most favorable to the verdict and determine whether any rational trier of fact could have found the essential elements of the offense beyond a reasonable doubt. *Jackson*, 443 U.S. at 319; *Isassi v. State*, 330 S.W.3d 633, 638 (Tex. Crim. App. 2010). The trier of fact may believe all, some, or none of a witness's testimony because the factfinder is the sole judge of the weight and credibility of the witnesses. *Sharp v. State*, 707 S.W.2d 611, 614 (Tex. Crim. App. 1986); *Isham v. State*, 258 S.W.3d 244, 248 (Tex. App.—Eastland 2008, pet. ref'd). We defer to the trier of fact's resolution of any conflicting inferences raised in the evidence and presume that the trier of fact resolved such conflicts in favor of the verdict. *Jackson*, 443 U.S. at 326; *Brooks*, 323 S.W.3d at 894; *Clayton v. State*, 235 S.W.3d 772, 778 (Tex. Crim. App. 2007).

IV. *Analysis*

On appeal, Appellant asserts a sufficiency-of-the-evidence argument. He argues: (1) he was simply breaking up a disturbance, and no one saw him actually strike Christina; (2) the victim did not testify, and therefore no one can prove she was in pain; and (3) there was no evidence that the alleged contact caused physical illness or impairment. In response, the State asserts that the jury could reasonably infer that the victim was distraught by her tone of voice when she spoke to the 9-1-1 operators and told them that she had been assaulted by Appellant. In addition, she suffered

pain, as shown by the photographs taken of her at the scene and eyewitness testimony of Appellant's actions.

The relevant question in a sufficiency-of-the-evidence case is whether any rational trier of fact could have found the essential elements of the offense beyond a reasonable doubt. *Jackson*, 443 U.S. at 319. The jury heard both of the 9-1-1 calls logged in response to the event, which can be used to infer from the tone of the victim's voice that she was distraught and, from her words, that Appellant was "violent" and "did hit [her]," which indicated that he assaulted her. In the call to 9-1-1 made by the homeowner's wife, Appellant was described as "hitting [Christina]." The jury heard testimony from the first police officer who arrived at the scene. He gathered evidence, which included pictures of the marks on Christina. Appellant did not testify on his own behalf.

The Texas Court of Criminal Appeals has held that "bodily injury" is broad enough to cover "[a]ny physical pain, however minor." *Garcia v. State*, 367 S.W.3d 683, 688 (Tex. Crim. App. 2012) (citing *Laster v. State*, 275 S.W.3d 512, 524 (Tex. Crim. App. 2009)). So long as violence is clearly perpetrated against another, it does not "serve the legislative intent to engage in fine distinctions as to degree or character of the physical force exerted." *Lane v. State*, 763 S.W.2d 785, 787 (Tex. Crim. App. 1989). The term physical pain is a term of common usage and, when construed according to the fair import of its meaning, is not so vague that men of common intelligence must guess at its meaning. *Ramirez v. State*, 518 S.W.2d 546, 547 (Tex. Crim. App. 1975).

Juries may make reasonable inferences from evidence that is presented at trial, and "circumstantial evidence is as probative as direct evidence in establishing . . . guilt." *Hooper*, 214 S.W.3d at 14. "Circumstantial evidence alone is sufficient to establish guilt." *Guevara v. State*, 152 S.W.3d 45, 49 (Tex. Crim. App. 2004). The

jury could have inferred from the tone of voice in the phone calls to 9-1-1, the marks on Christina's neck and under her eye, and the testimony of the witnesses that the victim felt physical pain, which is the criterion used to establish bodily injury.[4]

We have reviewed the record, and we hold that a rational jury could have found the existence of each of the elements of the offense beyond a reasonable doubt. The evidence was sufficient to convict Appellant of the offense of assault. We overrule Appellant's sole issue.

V. *This Court's Ruling*

We affirm the judgment of the trial court.

MIKE WILLSON
JUSTICE

July 13, 2017

Do not publish. *See* TEX. R. APP. P. 47.2(b).

Panel consists of: Wright, C.J.,
Willson, J., and Bailey, J.

[4]*See* PENAL § 1.07(a)(8).