



In The
Eleventh Court of Appeals

No. 11-16-00353-CR

RICARDO GARCIA, Appellant

V.

THE STATE OF TEXAS, Appellee

**On Appeal from the 106th District Court
Dawson County, Texas
Trial Court Cause No. 14-7394**

MEMORANDUM OPINION

The jury found Ricardo Garcia guilty of the offense of harassment of a public servant.¹ Appellant pleaded “true” to the enhancement allegations,² and the trial court assessed punishment at confinement for eight years and sentenced Appellant.

¹See TEX. PENAL CODE ANN. § 22.11(a)(2) (West Supp. 2016).

²See *id.* § 12.42(a).

In a single issue on appeal, Appellant asserts that the State adduced insufficient evidence to convict him of the charged offense. We affirm.

I. The Charged Offense

The grand jury returned an indictment against Appellant for harassment of a public servant. The indictment charged that Appellant, on or about July 8, 2012, with the intent to assault, harass, or alarm a correctional officer, threw urine on the officer while the officer was discharging his duties. A person commits an offense under Section 22.11(a)(2) if, with intent to assault, harass, or alarm a public servant, the person causes the public servant to “contact the . . . urine . . . of the actor [or] any other person . . . while the public servant is lawfully discharging an official duty or in retaliation or on account of an exercise of the public servant’s official power or performance of an official duty.” PENAL § 22.11(a)(2).

II. Evidence at Trial

On the afternoon of the offense, Paul Saenz, a correctional officer with the Texas Department of Criminal Justice, collected lunch trays from cells in a high security cellblock. Administrative segregation, the section of the jail where Officer Saenz worked, and where Appellant was housed, was reserved for inmates who have been segregated from the general population due to their behavioral problems. Officer Saenz approached Appellant’s cell and asked him to step back so that the officer could retrieve Appellant’s food tray. When Officer Saenz lowered the food slot door, Appellant approached; stuck his hand out; and “chunked,” “dashed,” or “threw” a liquid at Officer Saenz through the food slot. The liquid, which smelled of urine, splashed onto Officer Saenz’s face, chest, and legs. Officer Saenz testified that Appellant stated, “I hope you f-----g like that coffee and p--s,” and “It’s for that case, b---h.” Officer Saenz wore a uniform and a “thrust” vest at the time of the incident.

Officer Saenz's shirt tested positive for urine; his pants and vest were not tested for urine. None of the items were tested for DNA. In addition, because the camera system randomly recorded cellblock wings, it did not capture the incident on videotape.

Eddie Rocha, an investigator with the Office of the Inspector General, testified that he attempted to speak with Appellant but that Appellant refused to speak to him. Investigator Rocha also conducted a search for a disciplinary write-up—the “case” mentioned by Appellant as his justification for his assault on Officer Saenz—but could not find one. Officer Saenz could not recall whether he had written a disciplinary report on Appellant prior to the incident at issue in this case.

At trial, Appellant testified in his own defense and asserted that he did not throw anything on Officer Saenz. He claimed that his cellmate, who was serving a forty-year sentence, had “dashed” Officer Saenz. He said Officer Saenz had written them up for not taking towels off a line. He also explained that Officer Saenz may have been mistaken because Appellant's cellmate was similar in size and weight to Appellant. Appellant denied that anyone had talked to him or asked him for a statement during the investigation.

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, 319 (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 by 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 argues that his cellmate threw boiling water and not urine at Officer Saenz. He also claims that Officer Saenz was confused about who threw the liquid at Officer Saenz because Appellant was the same general size and weight as his cellmate. Appellant also argues that, because Officer Saenz's uniform was not tested for DNA and no one recorded the incident on videotape, there was insufficient evidence to convict him.

At trial, Appellant testified that his cellmate "dashed" Officer Saenz and claimed that Officer Saenz had misidentified him. Officer Saenz identified Appellant as the inmate who threw the liquid at him. Officer Saenz said that Appellant told him that the liquid was urine and told him why Appellant threw urine at him. Lab tests confirmed that urine was on Officer Saenz's shirt. Investigator Rocha did not believe one could get DNA from the urine on Officer Saenz's shirt.

The jury chose to believe Officer Saenz and not to believe Appellant's assertions that his cellmate threw boiling water at Officer Saenz or that Officer Saenz misidentified Appellant. We have reviewed the record, and we hold that a rational jury could have found the existence of each of the elements of the charged offense beyond a reasonable doubt. We overrule Appellant's sole issue.

V. This Court's Ruling

We affirm the judgment of the trial court.

MIKE WILLSON
JUSTICE

June 30, 2017

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

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