Affirmed and Memorandum Opinion filed January 21, 2010.

In The

Fourteenth Court of Appeals

NO. 14-08-01059-CR

JOHN C. PHILIP, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the County Criminal Court at Law No. 12
Harris County, Texas
Trial Court Cause No. 1494851

MEMORANDUM OPINION

A jury convicted appellant John C. Philip of assault of a family member. The trial court sentenced him to one year confinement, suspended his sentence, and placed him on community supervision for a year. In two issues, appellant challenges the legal and factual sufficiency of the evidence to support his conviction. In a third issue, appellant asserts that the trial court reversibly erred by admitting evidence of prior acts of misconduct. We affirm.

Background

In December 2007, appellant and his wife, Valsamma, were driving home from a church service in Pearland when they got into an argument about their children. Appellant was driving the car. During the argument, Valsamma shook her finger at appellant. The parties agree that appellant hit Valsamma in the mouth; however, appellant asserts that the blow occurred accidentally as he was attempting to move her hand away from his face so that he could see the road. The blow to Valsamma's mouth caused bleeding and pain. Appellant also struck Valsamma on her hand, causing a bruise. When appellant and Valsamma arrived home, she went upstairs and iced her mouth for several hours.

Valsamma called her adult daughter, Tina, when she got home to let Tina know that she would not be attending a planned luncheon with her children because appellant had hit her on her lips. A few hours later, the Philip's adult children, Tina, Togy, and Tony, came to the Philip's home to check on Valsamma. Tina found her mother upstairs "curled up on the bed" with ice on her mouth. After seeing her mother's condition, Tina called the police. Meanwhile, Togy confronted appellant about what he had done to his mother. Appellant and Togy got into a struggle.

Shortly thereafter, Harris County Sheriff's Deputy Henry Williams arrived in response to Tina's 911 call. Deputy Williams asked appellant if he had hit Valsamma, and appellant replied "yes." Deputy Williams arrested appellant. Valsamma obtained an emergency protective order and moved to Dallas with her children. She returned to Houston a few weeks later to meet with a social worker at the Harris County District Attorney's Office and to apply for a more permanent protective order. Valsamma did not speak with appellant again until about five months after the incident.

At trial, Valsamma described the incident to the jury. She testified that she first believed that appellant intentionally hit her, but after speaking with appellant several months later, she came to believe that appellant accidentally struck her. She also stated

that appellant had never been physically violent with her; however, she later testified that when she applied for the protective order with the District Attorney's Office, she indicated that appellant had previously pushed, pulled, shoved, confined, and verbally abused her in front of their children. She clarified that most of these incidents occurred over thirty years ago.

Deputy Williams described his interaction with appellant. He also testified that Valsamma appeared shaken up and emotional. In addition, both Tina and Togy confirmed that appellant admitted to Deputy Williams that he had hit Valsamma. They also testified that they did not have a good relationship with their father. Togy described the altercation between himself and appellant that occurred when he arrived at the house the evening the incident occurred. Togy also testified that when Valsamma attempted to intervene in the dispute, appellant "tried to attack" her and had to be physically restrained.

Appellant testified and agreed that he struck Valsamma in the face during their argument in the car. He claimed that it was an accident that occurred when he was trying to push Valsamma's hand away from his face so that he could drive safely. He also testified that when his children arrived, they were angry; he also described the incident with his son Togy and testified that Togy had struck him in the shoulder and knocked him to the ground. He stated that Togy and others kicked and hit him when he was on the ground. He further testified that Deputy Williams never asked him if he hit his wife, nor did he tell the deputy that he had hit her. He explained that the incidents Valsamma had described involving pushing, grabbing, and confining her were accidents as well. Appellant also testified that his children each demanded $100,000 or they would testify against him at his trial.

After hearing the evidence, the jury found appellant guilty of assault of a family member. The trial court sentenced appellant to one year confinement, suspended the

sentence, and placed him on community supervision for a year. This appeal timely ensued.

Analysis

A. Sufficiency of the Evidence

In his first two issues, appellant challenges the legal and factual sufficiency of the evidence to show that he intentionally or knowingly struck the complainant with his hand. A person commits assault if he intentionally, knowingly, or recklessly[1] causes bodily injury to another, including the person's spouse. TEX. PENAL CODE ANN. § 22.01(a). Because appellant has challenged only the sufficiency of the evidence relating to intent, we likewise limit our review to this element of the offense.

1. Standard of Review

In evaluating the legal sufficiency of the evidence, we must view the evidence in the light most favorable to the prosecution and determine whether any rational trier of fact could have found the essential elements of the offense beyond a reasonable doubt. *Jackson v. Virginia*, 443 U.S. 307, 319 (1979); *Vasquez v. State*, 67 S.W.3d 229, 236 (Tex. Crim. App. 2002). Although we consider all evidence presented at trial, we may not re-weigh the evidence and substitute our judgment for that of the jury. *King v. State*, 29 S.W.3d 556, 562 (Tex. Crim. App. 2000). The jury is the exclusive judge of the credibility of witnesses and of the weight to be given their testimony, and it is the exclusive province of the jury to reconcile conflicts in the evidence. *Jones v. State*, 944 S.W.2d 642, 647 (Tex. Crim. App. 1996). We must resolve any inconsistencies in the testimony in favor of the verdict. *Curry v. State*, 30 S.W.3d 394, 406 (Tex. Crim. App. 2000). On appeal, the same standard of review is used for both circumstantial and direct evidence cases. *Hooper v. State*, 214 S.W.3d 9, 13 (Tex. Crim. App. 2007).

[1] Neither the indictment nor the jury charge in this case included the mental state "reckless."

When conducting a factual-sufficiency review, on the other hand, we view all of the evidence in a neutral light. *See Cain v. State*, 958 S.W.2d 404, 408 (Tex. Crim. App. 1997); *Clewis v. State*, 922 S.W.2d 126, 134 (Tex. Crim. App. 1996). We may set the verdict aside only if (1) the evidence is so weak that the verdict is clearly wrong and manifestly unjust, or (2) the verdict is against the great weight and preponderance of the evidence. *Watson v. State*, 204 S.W.3d 404, 414–15 (Tex. Crim. App. 2006) (citing *Johnson v. State*, 23 S.W.3d 1, 11 (Tex. Crim. App. 2000)). However, while we may disagree with the jury's conclusions, we must exercise appropriate deference to avoid substituting our judgment for that of the jury, particularly in matters of credibility. *Drichas v. State*, 175 S.W.3d 795, 799 (Tex. Crim. App. 2005); *see also Watson*, 204 S.W.3d at 414 (stating that a court should not reverse a verdict it disagrees with unless it represents a manifest injustice even though supported by legally sufficient evidence).

2. Intent

Assault is a result-of-conduct crime; to be guilty of assault, the actor must have intended the result of his conduct rather than simply the conduct itself. *Landrian v. State*, 268 S.W.3d 532, 536 (Tex. Crim. App. 2008). As is relevant here, a person acts intentionally when it is his conscious object or desire to cause the result. *See* TEX. PENAL CODE ANN. § 6.03(a) (Vernon 2007). A person acts knowingly, or with knowledge, when he is aware that his conduct is reasonably certain to cause the result. *Id.* § 6.03(b). Intent is a fact question that must be determined by the jury. *Brown v. State*, 122 S.W.3d 794, 800 (Tex. Crim. App. 2003). Intent must generally be inferred from the circumstantial evidence surrounding an incident, including the acts, words, and conduct of the accused. *Guevara v. State*, 152 S.W.3d 45, 50 (Tex. Crim. App. 2004). Finally, "[o]ne's acts are generally reliable circumstantial evidence of one's intent[.]" *Laster v. State*, 275 S.W.3d 512, 524 (Tex. Crim. App. 2009) (quoting *Rodriguez v. State*, 646 S.W.2d 524, 527 (Tex. App.—Houston [1st Dist.] 1982, no pet.)).

3. Application

Here, there is no dispute that appellant and Valsamma were arguing when appellant struck her in the mouth. Appellant asserts that he accidentally hit her when he was trying to push her hand out of his face. But appellant struck Valsamma with such force that pain radiated into her teeth and her mouth bled; her injuries were still visible several hours after the assault. In addition, Valsamma testified that, at the time the incident occurred, she believed that appellant struck her intentionally. Deputy Williams testified that appellant admitted hitting Valsamma; both Tina and Togy confirmed that they heard appellant admit to Deputy Williams that he had hit their mother.

Valsamma also testified to several incidents in the past in which appellant had behaved violently toward her. Appellant admitted that these past incidents had occurred, but stated that they were accidental, as well. Appellant further testified that a woman must "obey" her husband and that if she does not, a husband may "[g]ive some punishment."

The State presented uncontroverted evidence regarding the nature of Valsamma's injuries. Valsamma had a busted and bleeding lip and a bruise on her hand. At the time of the incident, she consistently told others that appellant had assaulted her. She immediately applied for an emergency protective order and then applied for an extended protective order lasting several months longer. She moved out of her home in Houston to live with her children in Dallas immediately after the incident and had no contact with appellant for several months.

Although at the time of appellant's trial he and Valsamma had reconciled and she testified that she no longer believed appellant hit her intentionally, the jury could have reasonably inferred from the descriptions of the incident and the nature of Valsamma's injuries that appellant swung his hand at Valsamma with the intention of injuring her or with knowledge that an injury was reasonably certain to occur. *See* TEX. PENAL CODE ANN. § 22.01(a); *see also Dobbins v. State*, 228 S.W.3d 761, 765 (Tex. App.—Houston

[14th Dist.] 2007, pet. dism'd) (noting that jury may infer existence of mental state from acts, words, and conduct of the accused). Despite Valsamma and appellant's testimony that appellant accidentally hit Valsamma, we must resolve conflicts in the testimony in favor of the jury's verdict. *See Curry*, 30 S.W.3d at 406; *Jones*, 944 S.W.2d at 647. Further, the jury is free to accept or reject any or all of the evidence presented by any witness. *See Wesbrook v. State*, 29 S.W.3d 103, 111 (Tex. Crim. App. 2000). Appellant's actions, coupled with the nature of the wounds he inflicted on Valsamma, provide a sufficient basis from which the jury could infer that he intended to cause bodily injury to Valsamma. *See Laster*, 275 S.W.3d at 524.

In sum, viewing this evidence in the light most favorable to the verdict, we conclude that a rational trier of fact could have found that appellant intentionally or knowingly assaulted Valsamma. Further, viewing all the evidence in a neutral light, we cannot say that the jury's verdict is so contrary to the overwhelming weight of the evidence as to be clearly wrong and unjust, nor is the verdict against the great weight and preponderance of the evidence. We therefore overrule appellant's first and second issues.

B. Admission of Prior Acts of Appellant's Misconduct

In his third and final issue, appellant contends that the trial court reversibly erred by overruling his Rule 403[2] objection to evidence demonstrating prior acts of misconduct.

1. Standard of Review

Because trial courts are in the best position to decide questions of substantive admissibility of evidence, an appellate court must review a trial court's admissibility decision under an abuse-of-discretion standard. *Powell v. State*, 63 S.W.3d 435, 438 (Tex. Crim. App. 2001); *see also Montgomery v. State*, 810 S.W.2d 372, 391(Tex. Crim.

[2] Texas Rule of Evidence 403 provides that relevant evidence may be excluded if its "probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury. . . ." TEX. R. EVID.403.

App. 1990) (stating trial court "has the best vantage from which to decide" admissibility questions). A trial court abuses its discretion when it acts without reference to any guiding rules and principles or acts arbitrarily or unreasonably. *See Montgomery*, 810 S.W.2d at 380. This standard requires an appellate court to uphold a trial court's admissibility decision when that decision is within the zone of reasonable disagreement. *Id.*

In addition, to preserve error for appellate review, the complaining party must make a timely, specific objection that the trial court refuses. TEX. R. EVID. 103; TEX. R. APP. P. 33.1(a); *Young v. State*, 137 S.W.3d 65, 69 (Tex. Crim. App. 2004) (en banc). Ordinarily, an objection is required every time inadmissible evidence is presented. *Valle v. State*, 109 S.W.3d 500, 509 (Tex. Crim. App. 2003). Error in allowing inadmissible evidence is cured when the same evidence is admitted without objection elsewhere. *Id.*

2. Application

Appellant asserts that the trial court erred in admitting testimony from Valsamma that appellant had, in the past, pushed, pulled, shoved, confined, and verbally abused her. He contends that this testimony was erroneously admitted into evidence over his Rule 403 objection because it was "more prejudicial than probative."

However, this same evidence—that appellant had previously pushed, pulled, shoved, confined, and verbally abused Valsamma—was introduced without objection through his own testimony. During cross-examination, appellant conceded that he had previously pushed, shoved, grabbed, and confined Valsamma, although he stated most of these incidents were accidents. In fact, he admitted that he had pushed her many times in the past, that he had shoved her several times because she did not obey him, and that he had grabbed her in the past. He also stated that he had confined her a few times in the thirty-five years that they had been married. No objections were made to any of this testimony.

Under these circumstances, any error the trial court may have made in admitting Valsamma's testimony was cured. *See id.* Thus, we overrule appellant's third issue.

Conclusion

We affirm the trial court's judgment.

/s/ Margaret Garner Mirabal
Justice

Panel consists of Justices Anderson and Boyce and Senior Justice Mirabal.[*]

Do Not Publish — TEX. R. APP. P. 47.2(b).

[*] Senior Justice Margaret Garner Mirabal sitting by assignment.