

In The
Court of Appeals
Ninth District of Texas at Beaumont

NO. 09-15-00432-CR

JAMES JOSEPH YOUNG, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the 128th District Court
Orange County, Texas
Trial Cause No. A140661-R

MEMORANDUM OPINION

A jury found James Joseph Young guilty of assault on a public servant. *See* Tex. Penal Code Ann. § 22.01(a)(1), (b)(1) (West Supp. 2016). The trial court assessed a ten-year sentence as punishment, suspended imposition of the sentence, and placed Young on community supervision for ten years. *See generally* Tex. Code Crim. Proc. Ann. art. 42A.053(d) (West Supp. 2016).¹ In a single issue presented for

¹ A non-substantive codification of Chapter 42 of the Texas Code of Criminal Procedure took effect January 1, 2017, after the date of Young’s trial. We cite the

appellate review, Young challenges the sufficiency of the evidence supporting his conviction.

We review the sufficiency of the evidence to support a conviction under the standard set forth in *Jackson v. Virginia*, 443 U.S. 307, 319 (1979). See *Brooks v. State*, 323 S.W.3d 893, 895 (Tex. Crim. App. 2010). The *Jackson* standard is the only standard that we apply in an evidentiary-sufficiency review. *Adames v. State*, 353 S.W.3d 854, 859 (Tex. Crim. App. 2011). Under that standard, we view all of the evidence in the light most favorable to the verdict and determine, based on that evidence and any reasonable inferences therefrom, whether any rational factfinder could have found the essential elements of the offense beyond a reasonable doubt. *Temple v. State*, 390 S.W.3d 341, 360 (Tex. Crim. App. 2013) (citing *Jackson*, 443 U.S. at 318–19). The jury is the sole judge of the credibility and weight to be attached to the testimony of the witnesses. *Id.* In this role, the jury may choose to believe all, some, or none of the testimony presented by the parties. *Chambers v. State*, 805 S.W.2d 459, 461 (Tex. Crim. App. 1991). Further, the jury is permitted to draw multiple reasonable inferences from facts as long as each is supported by the evidence presented at trial. *Temple*, 390 S.W.3d at 360. When the record supports

current version of the statute, which at the time of the trial was contained in article 42.12, § 3(b) of the Texas Code of Criminal Procedure.

conflicting inferences, we presume that the jury resolved those conflicts in favor of the verdict and therefore defer to that determination. *Id.* “After giving proper deference to the factfinder’s role, we will uphold the verdict unless a rational factfinder must have had reasonable doubt as to any essential element.” *Laster v. State*, 275 S.W.3d 512, 518 (Tex. Crim. App. 2009).

The indictment alleged that Young

did then and there intentionally, knowingly or recklessly cause bodily injury to Bryan Cooper by kicking the said Bryan Cooper about the body with his foot and the defendant did then and there know that the said Bryan Cooper was then and there a public servant, to wit: a peace officer and that the said Bryan Cooper was then and there lawfully discharging an official duty, to-wit: arresting the said James Joseph Young[.]

It was undisputed in the trial that, in his capacity as a highway patrolman, Brian Cooper arrested Young for driving while intoxicated. The disputed evidence concerned whether Young intentionally, knowingly, or recklessly kicked Cooper’s body with his foot. According to Officer Cooper, Young became agitated when he realized Cooper was going to search Young’s truck before towing it. Officer Cooper removed the handcuffed Young from the front seat of the patrol vehicle and ordered Young to go to the ground. According to Officer Cooper, while he was standing behind Young, Young “used his back right foot, kicked up and kicked me right in the middle — near my stomach and where my cell phone was on my belt.” Officer

Cooper stated that Young's motion was "just like a horse kick[ing] backwards[.]" Officer Cooper stated that Young kicked him hard enough to dislodge the phone on his belt and make him cough from pain. Officer Cooper stated that his vest took the brunt of the force but his phone broke.

Officer Cooper was equipped with a body recorder and an in-car video camera. The recording was played for the jury, but Officer Cooper and Young are out of the camera's visual range during the incident. Coughing is noticeable on the recording, and Young can be heard denying that he kicked the officer. Additionally, Officer Cooper demonstrated for the jury how Young kicked him, and he told the jury that it was an intentional act and not the result of Young losing his footing.

In his appellate brief, Young contends that the recording shows that immediately before the incident Young was complying with Officer Cooper's directives. He argues the State failed to prove that the assault occurred because the audio recording contains no sounds of a scuffle, Officer Cooper does not sound winded when he speaks, and coughing is not heard until later in the recording. He claims that any force sufficient to dislodge the cellphone should have been loud enough to be recorded. Young argues it defies logic that a handcuffed person would be able to kick someone on their chest from a standing position. He argues the timing on the recording, where Officer Cooper can be heard telling Young, "get down on

the ground,” then a few seconds later saying, “get all the way down,” does not match Officer Cooper’s testimony.

The recording does not, as Young suggests, show that the officer testified falsely and no offense occurred. Indistinct sounds can be heard, with the officer saying, “Don’t fight me,” followed by Young stating, “I’m not fighting you,” but the recording is inconclusive with regard to whether Young kicked Officer Cooper in the abdomen. The recording is not irrefutable proof that no offense occurred, such that the jury’s verdict that Young assaulted Officer Cooper would be irrational. *See, e.g., Brooks*, 323 S.W.3d at 906–07. The jury was free to believe Officer Cooper’s testimony and accept his demonstration as a plausible manner in which the assault could have occurred. *See Morales v. State*, 293 S.W.3d 901, 909–10 (Tex. App.—Texarkana 2009, pet. ref’d). We overrule the issue presented on appeal and affirm the trial court’s judgment.

AFFIRMED.

CHARLES KREGER
Justice

Submitted on August 4, 2016
Opinion Delivered April 19, 2017
Do Not Publish

Before McKeithen, C.J., Kreger and Horton, JJ.