IN THE
TENTH COURT OF APPEALS

No. 10-16-00235-CR

REGINALD LAMAR BELL,

Appellant

v.

THE STATE OF TEXAS,

Appellee

From the 54th District Court
McLennan County, Texas
Trial Court No. 2015-2031-C2

MEMORANDUM OPINION

In one issue, appellant, Reginald Lamar Bell, complains that the evidence is insufficient to support his conviction for aggravated robbery. *See* TEX. PENAL CODE ANN. § 29.03 (West 2011). Specifically, Bell contends that the evidence is insufficient to establish his guilt because no party instruction was submitted, and because there was no evidence he took or attempted to take any property from the victim. We affirm.

I. SUFFICIENCY OF THE EVIDENCE

In reviewing the sufficiency of the evidence to support a conviction, we view all of the evidence in the light most favorable to the prosecution to determine whether any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. *Jackson v. Virginia*, 443 U.S. 307, 319, 99 S. Ct. 2781, 2789, 61 L. Ed. 2d 560 (1979); *Brooks v. State*, 323 S.W.3d 893, 895 (Tex. Crim. App. 2010); *Clayton v. State*, 235 S.W.3d 772, 778 (Tex. Crim. App. 2007). This standard enables the fact finder to draw reasonable inferences from the evidence. *Jackson*, 443 U.S. at 319, 99 S. Ct. at 2789; *Clayton*, 235 S.W.3d at 778. In performing our sufficiency review, we may not re-evaluate the weight and credibility of the evidence or substitute our judgment for that of the fact finder. *Dewberry v. State*, 4 S.W.3d 735, 740 (Tex. Crim. App. 1999); *see Curry v. State*, 30 S.W.3d 394, 406 (Tex. Crim. App. 2000) ("We resolve inconsistencies in the testimony in favor of the verdict."). Instead, we determine whether the necessary inferences are reasonable based upon the combined and cumulative force of all the evidence when viewed in the light most favorable to the verdict. *Hooper v. State*, 214 S.W.3d 9, 16-17 (Tex. Crim. App. 2007).

Here, Bell was charged with aggravated robbery in two paragraphs: (1) by intentionally and knowingly causing serious bodily injury to Justin Flinn by punching and/or striking him while in the course of committing theft of property; and (2) by intentionally, knowingly, and recklessly causing bodily injury to Flinn by punching

and/or striking him while in the course of committing theft of property and with intent to obtain or maintain control of said property. Section 29.03(a) of the Texas Penal Code provides that a person commits the offense of aggravated robbery if he commits robbery and he: (1) causes serious bodily injury to another; (2) uses or exhibits a deadly weapon; or (3) causes bodily injury to another person or threatens or places another person in fear of imminent bodily injury or death. TEX. PENAL CODE ANN. § 29.03(a). A person commits robbery "if, in the course of committing theft . . . and with intent to obtain or maintain control of the property, he intentionally, knowingly, or recklessly causes bodily injury to another or intentionally threatens or places another in fear of imminent bodily injury or death." *Id.* § 29.02 (West 2011). Moreover, a person commits theft if he "unlawfully appropriates property with intent to deprive the owner of the property." *Id.* § 31.03(a) (West Supp. 2016).

At trial, Bell admitted that he assaulted Flinn by hitting him real hard.[1] Bell also acknowledged that his hands are capable of causing serious bodily injury. Rachel Black testified that she witnessed Bell assaulting Flinn. She further noted that Flinn's face was swollen as a result of the assault and that Flinn "really wasn't coherent." Officer Patrick McKnight of the Waco Police Department stated the following: "[H]e looked like he had been severely beaten . . . had blunt-force trauma to the face . . . his eyes were swollen shut.

[1] According to Detective Cassie Price of the Waco Police Department, DNA evidence and injuries on Bell's hands confirmed his involvement in the incident.

[H]e was having trouble focusing on the questions we were asking, and including what the ETMC was asking . . . but he was . . . bloody and beaten."[2] Officer McKnight concurred that Bell's hands are capable of causing death or serious bodily injury.

Flinn recounted that, on the night in question, he was approached by a guy asking for change for a twenty-dollar bill. When Flinn tried to give the guy change for the twenty-dollar bill, he was struck in the head and repeatedly assaulted. As a result of the incident, $23 and a cell phone were taken from Flinn. And though an application on Flinn's cell phone indicated that it was in a field near the Cameron Park Zoo, law enforcement was unable to recover either the cell phone or the $23 taken from Flinn.

Despite the foregoing evidence, Bell argues that the evidence supporting his conviction for aggravated robbery is insufficient because there was no evidence that he took or attempted to take any property from Flinn, and because the State did not request a party instruction in the charge. We disagree.

This Court has recognized that the gravamen of robbery is the assaultive conduct, not the theft. *See, e.g., Reed v. State*, No. 10-11-00158-CR, 2012 Tex. App. LEXIS 1650, at **14-15 (Tex. App.—Waco Feb. 29, 2012, pet. ref'd) (mem. op., not designated for publication); *see Green v. State*, 840 S.W.2d 394, 401 (Tex. Crim. App. 1992) ("'The actual

[2] Flinn later noted that as a result of the assault, he sustained a fracture to his face, which is still swollen and disfigured more than a year after the assault transpired. Flinn's wife, Kristal Conley, stated that Flinn was unable to use his jaw for three months after the assault and that he still has scars and his eye remains disfigured more than a year later.

commission of theft is not a prerequisite to the commission of robbery; the gravamen of robbery is the assaultive conduct and not the theft.'" (quoting *Crank v. State*, 761 S.W.2d 328, 350 (Tex. Crim. App. 1988))); *Sendejo v. State*, 953 S.W.2d 443, 452 (Tex. App.—Waco 1997, pet. ref'd). In other words, to show a robbery, the evidence must show that the accused assaulted the victim in an attempt to commit theft. *See Green*, 840 S.W.2d at 401; *see also Sendejo*, 953 S.W.2d at 452.

Focusing on the gravamen of robbery, and viewing the evidence in the light most favorable to the verdict, a rational trier of fact could have found beyond a reasonable doubt that Bell engaged in the assaultive conduct of severely beating Flinn during the incident. *See Jackson*, 443 U.S. at 319, 99 S. Ct. at 2789; *Brooks*, 323 S.W.3d at 895; *Clayton*, 235 S.W.3d at 778; *Green*, 840 S.W.2d at 401; *Crank*, 761 S.W.2d at 350; *Sendejo*, 953 S.W.2d at 452; *see also Reed*, 2012 Tex. App. LEXIS 1650, at **14-15. Additionally, a rational trier of fact could have also inferred that Bell's assault of Flinn occurred within the course of attempting to commit theft to obtain or maintain control of $23 and Flinn's cell phone. *See* TEX. PENAL CODE ANN. §§ 29.02, 29.03(a), 31.03(a); *see also Jackson*, 443 U.S. at 319, 99 S. Ct. at 2789; *Clayton*, 235 S.W.3d at 778; *Hooper*, 214 S.W.3d at 16-17. It is of no consequence that Bell was not seen taking the property from Flinn or that Bell was not found in possession of the property. *See Green*, 840 S.W.2d at 401; *Crank*, 761 S.W.2d at 350; *Sendejo*, 953 S.W.2d at 452 ("However, the failure of an accused to receive any proceeds from a robbery does not equate to a finding that the participant is not guilty of

robbery."); *see also Reed*, 2012 Tex. App. LEXIS 1650, at **14-15. Accordingly, we hold that the evidence is sufficient to support Bell's conviction for aggravated robbery.[3] *See* TEX. PENAL CODE ANN. § 29.03(a); *see also Jackson*, 443 U.S. at 319, 99 S. Ct. at 2789; *Brooks*, 323 S.W.3d at 895; *Clayton*, 235 S.W.3d at 778. We overrule Bell's sole issue on appeal.

II. CONCLUSION

We affirm the judgment of the trial court.

AL SCOGGINS
Justice

Before Chief Justice Gray,
Justice Davis, and
Justice Scoggins
Affirmed
Opinion delivered and filed May 10, 2017
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[3] And given that the gravamen of the offense of robbery is the assaultive conduct and our analysis of the evidence in the record, we need not address Bell's contention regarding the lack of a party instruction in the jury charge. *See* TEX. R. APP. P. 47.1.