



IN THE  
TENTH COURT OF APPEALS

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No. 10-17-00045-CR

JAMES NELSON GOSS,

Appellant

v.

THE STATE OF TEXAS,

Appellee

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From the 40th District Court  
Ellis County, Texas  
Trial Court No. 40786CR

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MEMORANDUM OPINION

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James Nelson Goss was convicted of Assault Family Violence - Impeding Breath or Circulation and sentenced to 45 years in prison. *See* TEX. PENAL CODE ANN. § 22.01(a)(1), (b)(2)(B) (West 2011). Because the evidence is sufficient to support the conviction, the trial court's judgment is affirmed.

In one issue, Goss contends the evidence is insufficient to support his conviction because Shonda Smith, who Goss asserts was the only person who had personal knowledge of what had happened, denied that Goss choked her or was physically violent

toward her in any way.

The Court of Criminal Appeals has expressed our standard of review of a sufficiency issue as follows:

In determining whether the evidence is legally sufficient to support a conviction, a reviewing court must consider all of the evidence in the light most favorable to the verdict and determine whether, based on that evidence and reasonable inferences therefrom, a rational fact finder could have found the essential elements of the crime beyond a reasonable doubt. *Jackson v. Virginia*, 443 U.S. 307, 318-19 (1979); *Hooper v. State*, 214 S.W.3d 9, 13 (Tex. Crim. App. 2007). This "familiar standard gives full play to the responsibility of the trier of fact fairly to resolve conflicts in the testimony, to weigh the evidence, and to draw reasonable inferences from basic facts to ultimate facts." *Jackson*, 443 U.S. at 319. "Each fact need not point directly and independently to the guilt of the appellant, as long as the cumulative force of all the incriminating circumstances is sufficient to support the conviction." *Hooper*, 214 S.W.3d at 13.

*Lucio v. State*, 351 S.W.3d 878, 894 (Tex. Crim. App. 2011).

The Court of Criminal Appeals has also explained that our review of "all of the evidence" includes evidence that was properly and improperly admitted. *Conner v. State*, 67 S.W.3d 192, 197 (Tex. Crim. App. 2001). And if the record supports conflicting inferences, we must presume that the factfinder resolved the conflicts in favor of the prosecution and therefore defer to that determination. *Jackson v. Virginia*, 443 U.S. 307, 326, 99 S. Ct. 2781, 61 L. Ed. 2d 560 (1979). Further, direct and circumstantial evidence are treated equally: "Circumstantial evidence is as probative as direct evidence in establishing the guilt of an actor, and circumstantial evidence alone can be sufficient to establish guilt." *Hooper v. State*, 214 S.W.3d 9, 13 (Tex. Crim. App. 2007). Finally, it is well established that the factfinder is entitled to judge the credibility of witnesses and can

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).

On the night of October 11, 2015, the Glenn Heights 911 received a call during which it learned from Brandon Douglas that Smith had been choked by Goss. Brandon was a close friend of the family who referred to Smith as his “momma.” Brandon told the 911 operator that Smith had choke marks on her neck and that she had scratches and nails dug into her neck from being choked by Goss. When police officers arrived, Smith denied that anything had happened. According to Officer Alisha Williams, Smith acted like she was scared to talk to the officers and would not make eye contact with them. The officers saw scratches on and redness around Smith’s neck.

Smith’s son, Desmond, told the officers to look at Smith’s neck and begged Smith not to protect Goss. Desmond gave a written statement describing what had happened. In the statement, Desmond said that he heard Smith and Goss arguing in the bedroom. It then got quiet in the bedroom. Moments later, Smith emerged from the room saying, “Dez, he choked me; look at my neck.” Desmond stated that he saw choke marks on Smith’s neck from fingernails. Desmond also stated that he rushed into the bedroom and told Goss to get his clothes and get out.

Officer Carl Bennett pointed out to the jury the redness and scratches on Smith’s neck in pictures of Smith taken at the scene. He believed the scratches were recent because there was still some blood present from the breaking of the skin. Smith was hoarse and coughing, and held her neck. The officers also saw some petechiae, or red dots, in the whites of Smith’s eyes. Officer Bennett explained that “Petechiae is caused

by trauma as, for instance, placing your hands around someone's neck, cutting off circulation to the brain, causing the veins in your eyes to have trauma, swelling and erupting causing one millimeter to two millimeter red to purple dots below the eye." He also stated that Smith's eyes were bloodshot but distinguished bloodshot from petechiae. Although the paramedic called to the scene to make sure Smith did not need to go to the hospital did not see any petechiae in Smith's eyes, he stated he was not looking for any and only concentrated on Smith's pupils.

At trial, Smith vehemently denied that anything physical had happened. She stated that she bruised easily and acquired many marks on her from working at IHOP, the blood on her neck was from a mosquito bite, her eyes were bloodshot from drinking, and she was coughing because she had just recently been in the hospital for COPD and was still having problems with mucus in her lungs. Desmond vehemently denied knowing that anything had happened or that he had seen any marks on Smith. Neither witness wanted to be at the trial. The District Attorney's Office had to pick up Smith when she did not appear for trial as subpoenaed. Desmond would not read his statement and would not agree to any of the statements he wrote or those that were attributed to him by the officers. He would not accept the things he said that were on the audio recording of the officers' encounter with Smith, Desmond, and Goss.

Even if the jurors were required to believe that Smith had been in the hospital recently, as argued by Goss, they were not required to believe any of Smith's testimony or Desmond's testimony in which they denied that anything had happened. The jury was entitled to believe the circumstantial evidence, which is as probative as direct

evidence. Evidence which supported the conclusion that Goss choked Smith includes but is not limited to, the marks on Smith's neck and the petechiae in Smith's eyes seen by the officers, the comments by Brandon that Goss choked Smith, Smith's statement to Desmond that Goss choked her, and Desmond's statement that he saw choke marks on Smith's neck from fingernails.

Accordingly, based on a review of all of the evidence in the light most favorable to the verdict, we conclude that a rational fact finder could have found beyond a reasonable doubt that Goss committed assault family violence by impeding the breath or circulation of Shonda Smith.

Goss's sole issue is overruled, and the trial court's judgment is affirmed.

TOM GRAY  
Chief Justice

Before Chief Justice Gray,  
Justice Davis, and  
Justice Scoggins

Affirmed  
Opinion delivered and filed July 5, 2017  
Do not publish  
[CRPM]

