TEXAS COURT OF APPEALS, THIRD DISTRICT, AT AUSTIN

NO. 03-18-00237-CR[1]

Boguang Li, Appellant

v.

The State of Texas, Appellee

FROM THE COUNTY COURT AT LAW NO. 2 OF HAYS COUNTY
NO. 15-0182CR, THE HONORABLE DAVID GLICKLER, JUDGE PRESIDING

M E M O R A N D U M O P I N I O N

A jury found appellant Boguang Li guilty of the misdemeanor offense of family violence assault. *See* Tex. Penal Code § 22.01(a), (b); *see also* Tex. Fam. Code §§ 71.0021, 71.003, 71.005. Appellant elected to have the trial court decide his punishment, *see* Tex. Code Crim. Proc. art. 37.07(2)(b), and the court assessed appellant's punishment at confinement for two days in the county jail and a $2,500 fine, *see* Tex. Penal Code § 12.21. In a single point of error, appellant challenges the sufficiency of the evidence. We affirm the judgment of conviction.

[1] The notice of appeal in this case was originally filed in this Court on March 15, 2016. On March 22, 2016, the Supreme Court of Texas ordered the case transferred pursuant to its docket equalization authority to the Eighth Court of Appeals. *See* Tex. Gov't Code § 73.001; Misc. Docket No. 16-9040. This Court transferred the case to our sister court on April 11, 2016. On April 12, 2018, the Supreme Court of Texas ordered this case, along with 38 other cases that had also been previously transferred to the Eighth Court but had not reached final disposition, transferred back to this Court. *See* Misc. Docket No. 18-9054. The Eighth Court of Appeals transferred the case back to this Court on April 16, 2018.

BACKGROUND

The jury heard evidence that on the afternoon of May 1, 2014, Jason Weber, a UPS delivery person, was making deliveries at the outlet mall in San Marcos, Texas, when his attention was drawn to a car parked on the curve behind the mall because he heard a woman screaming. Weber said that, at that time, he saw nothing unusual and continued with his delivery. A minute or two later, when he finished making his delivery, Weber headed toward his next stop at the mall and saw the same car still parked on the curve behind the mall. Weber testified that he noticed that the car now had the trunk and either the two front doors or the two back doors open. Weber said that he slowly drove by the car, looked inside, and saw two people "arguing and yelling."

Weber testified that when he drove past the car, he looked in his right-hand mirror and saw a woman running from the car out into the field next to the parked car. According to Weber, she was "screaming and yelling," "looked afraid," and appeared to be "in distress." Weber then stopped his truck, looked back, and saw a man get out of the stopped car and run after the woman. Weber testified that he saw the man "grab" the woman and "push" or "throw" her to the ground. Then, Weber said, the man grabbed her "pretty forcefully" by the arm (he recalled it being her left arm), picked her up, and "dragg[ed] her back to the car." According to Weber, the man was trying to get the woman back into the car but she was "flailing." He said that the woman managed to escape the man but he grabbed her by the arm again. She then escaped a second time and started walking away really fast. Weber described her as "hysterically crying" as she hurried away.

Weber said that he called 911 when he saw the man throw the woman to the ground. Weber related that when the woman was walking away after escaping the second time, he caught up

to her in his UPS truck. Driving next to the woman, he offered her help and tried to convince her to get into the truck. He testified that he was concerned about the woman's safety but that she would not acknowledge him or get into his truck. He said that he then encouraged her to go to the mall security officer for help. At that point, according to Weber, the man drove by, cut off Weber's UPS truck, and caught up to the woman. The man stopped his car and got out, leaving his car door open. Weber explained that he then drove and caught up to the car and then got out of his truck to approach the woman. He said that he and the man were approaching the woman side by side, but the man "[held him] off." The man then grabbed the woman by the arm and put her in the car. Weber related that the man then closed the door and drove off. He further related that the woman's screams had drawn the attention of nearby Pottery Barn employees and that when the man drove off, the manager indicated that they got the car's license plate.

Weber also testified that he later observed the police arrest the man that he saw push or throw the woman to the ground. He also described some of the encounter between the police and the couple that he observed, including the woman's attempts to get to the man after he was arrested and placed in the back of the police car.

The jury also heard the testimony of Jesse Saavedra, a patrol officer with the San Marcos Police Department, who was dispatched to the outlet mall on the afternoon of May 1, 2014, in response to a call regarding a physical assault. Mall security directed him to a location behind the mall where another mall security officer was with a car that had two occupants, a man and woman identified as Boguang Li and Fan Yang. Corporal Saavedra testified that when he approached the car, both Li and Yang were crying. The driver—whom the officer identified in

court as appellant—told him that they were boyfriend and girlfriend and that they had had a verbal argument.[2] The officer indicated that both appellant and Yang denied that a physical altercation occurred. He said that when he told appellant that he had been dispatched to a call about a physical assault, appellant explained that he was holding Yang and she tried to run away. The officer also said that appellant explained that Yang might have hurt herself when she fell. In his testimony, Corporal Saavedra described the injuries that he observed on Yang: some bruising on one arm (her left arm), bruising on one shoulder area, a scratch on her throat, and a scrape along one elbow. He also testified that he saw a "couple drops of blood" on Yang's jeans or t-shirt, but that he had difficulty determining where the blood came from. The officer said that the injuries that he observed did not require medical treatment.[3] He also said that Yang refused to allow police to photograph her injuries.

Corporal Saavedra also testified that another officer, Ed Bradshaw, arrived on the scene as backup. Officer Bradshaw was the officer who talked to Weber, the UPS delivery person who indicated that he had observed the physical assault. Corporal Saavedra explained that he arrested appellant based on a witness (Weber) actually observing the assault (which he related to Officer Bradshaw) and the injuries he saw on Yang that were consistent with the description of the assault. According to Corporal Saavedra, Yang was "very emotional, very distraught, and crying" and became increasingly upset during the encounter with police. When appellant was arrested, handcuffed, and placed in the back of the patrol car, her crying escalated and she became "more

[2] Other information the officer obtained from appellant and Yang during the encounter indicated that they were both from New York and shared the same address.

[3] Corporal Saavedra also related that he did not observe any injuries on appellant.

hysterical." In addition, she repeatedly attempted to get into the patrol car with appellant. At one point, when the officers were briefing the victim-services person, Yang opened the door and got into the patrol car with appellant.[4] The officers had to physically remove her from the car.[5] Both officers testified that the injuries on Yang were present before they had to restrain her and remove her from the patrol car.

DISCUSSION

Appellant was charged by information with the assault of his girlfriend. Specifically, the information alleged that appellant

> did then and there intentionally, knowingly, or recklessly cause bodily injury to Fan Yang, by grabbing Fan Yang's arm with the defendant's hand or hands, or by pushing Fan Yang with the defendant's hand or hands.
>
> And Fan Yang was then and there a member of the defendant's family OR household OR has or has had a dating relationship with the defendant.

In his sole point of error on appeal, appellant challenges the sufficiency of the evidence supporting his conviction for family violence assault.

---

[4] Corporal Saavedra testified that Victim Services is typically called during a family violence situation and explained that the officers called Victim Services on this occasion because they needed assistance with Yang and how to help her since she was from out of town and did not know anyone other than appellant, who was being arrested.

[5] In his testimony, Weber described seeing the woman break away from police, run to get into the patrol car, and grab on to the man. He said that the police had to pull her out of the car as she was clinging to the man.

Sufficiency of the Evidence

Due process requires that the State prove, beyond a reasonable doubt, every element of the crime charged. *Jackson v. Virginia*, 443 U.S. 307, 313 (1979); *Rabb v. State*, 434 S.W.3d 613, 616 (Tex. Crim. App. 2014). When reviewing the sufficiency of the evidence to support a conviction, we consider all the evidence in the light most favorable to the verdict to determine whether, based on that evidence and the reasonable inferences therefrom, any rational trier of fact could have found the essential elements of the offense beyond a reasonable doubt. *Jackson*, 443 U.S. at 319; *Temple v. State*, 390 S.W.3d 341, 360 (Tex. Crim. App. 2013). In our sufficiency review we consider all the evidence in the record, whether direct or circumstantial, properly or improperly admitted, or submitted by the prosecution or the defense. *Thompson v. State*, 408 S.W.3d 614, 627 (Tex. App.—Austin 2013, no pet.); *see Jenkins v. State*, 493 S.W.3d 583, 599 (Tex. Crim. App. 2016); *Clayton v. State*, 235 S.W.3d 772, 778 (Tex. Crim. App. 2007). We assume that the trier of fact resolved conflicts in the testimony, weighed the evidence, and drew reasonable inferences in a manner that supports the verdict. *Jackson*, 443 U.S. at 318; *see Laster v. State*, 275 S.W.3d 512, 517 (Tex. Crim. App. 2009). We consider only whether the factfinder reached a rational decision. *See Morgan v. State*, 501 S.W.3d 84, 89 (Tex. Crim. App. 2016) (observing that reviewing court's role on appeal "is restricted to guarding against the rare occurrence when a fact finder does not act rationally") (quoting *Isassi v. State*, 330 S.W.3d 633, 638 (Tex. Crim. App. 2010)). "The key question is whether 'the evidence presented actually supports a conclusion that the defendant committed the crime that was charged.'" *Id.* (quoting *Williams v. State*, 235 S.W.3d 742, 750 (Tex. Crim. App. 2007)).

The trier of fact is the sole judge of the weight and credibility of the evidence. *See* Tex. Code Crim. Proc. art. 38.04; *Blea v. State*, 483 S.W.3d 29, 33 (Tex. Crim. App. 2016); *Dobbs v. State*, 434 S.W.3d 166, 170 (Tex. Crim. App. 2014). Thus, when performing an evidentiary sufficiency review, we may not re-evaluate the weight and credibility of the evidence and substitute our judgment for that of the factfinder. *See Montgomery v. State*, 369 S.W.3d 188, 192 (Tex. Crim. App. 2012). Instead, we must defer to the credibility and weight determinations of the factfinder. *Cary v. State*, 507 S.W.3d 750, 757 (Tex. Crim. App. 2016); *Nowlin v. State*, 473 S.W.3d 312, 317 (Tex. Crim. App. 2015). In addition, we must "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." *Murray v. State*, 457 S.W.3d 446, 448 (Tex. Crim. App. 2015) (quoting *Clayton*, 235 S.W.3d at 778). When the record supports conflicting reasonable inferences, we presume that the factfinder resolved the conflicts in favor of the verdict, and we defer to that resolution. *Cary*, 507 S.W.3d at 757; *Blea*, 483 S.W.3d at 33; *Murray*, 457 S.W.3d at 448–49.

Because factfinders are permitted to make reasonable inferences, "[i]t is not necessary that the evidence directly proves the defendant's guilt; circumstantial evidence is as probative as direct evidence in establishing the guilt of the actor, and circumstantial evidence alone can be sufficient to establish guilt." *Carrizales v. State*, 414 S.W.3d 737, 742 (Tex. Crim. App. 2013) (citing *Hooper v. State*, 214 S.W.3d 9, 13 (Tex. Crim. App. 2007)); *see Tate v. State*, 500 S.W.3d 410, 413 (Tex. Crim. App. 2016); *Nowlin,* 473 S.W.3d at 317. The standard of review is the same for direct and circumstantial evidence cases. *Jenkins*, 493 S.W.3d at 599; *Nowlin*, 473 S.W.3d at 317; *Dobbs*, 434 S.W.3d at 170.

To determine whether the State has met its evidentiary burden of proving a defendant guilty beyond a reasonable doubt, we compare the elements of the offense as defined by the hypothetically correct jury charge to the evidence adduced at trial. *Thomas v. State*, 444 S.W.3d 4, 8 (Tex. Crim. App. 2014) (citing *Malik v. State*, 953 S.W.2d 234, 240 (Tex. Crim. App. 1997)); *see Morgan*, 501 S.W.3d at 89. "A hypothetically correct jury charge is one that 'accurately sets out the law, is authorized by the indictment, does not unnecessarily increase the State's burden of proof or unnecessarily restrict the State's theories of liability, and adequately describes the particular offense for which the defendant was tried.'" *Jenkins*, 493 S.W.3d at 599 (quoting *Thomas*, 444 S.W.3d at 8, in turn quoting *Malik*, 953 S.W.2d at 240); *see Morgan*, 501 S.W.3d at 89. The law as authorized by the indictment consists of the statutory elements of the charged offense as modified by the factual details and legal theories contained in the indictment. *Patel v. State*, No. 03-14-00238-CR, 2016 WL 2732230, at *2 (Tex. App.—Austin May 4, 2016, no pet.) (mem. op., not designated for publication); *see Jenkins*, 493 S.W.3d at 599; *Thomas*, 444 S.W.3d at 8.

As relevant to the assault offense charged in this case, a person commits family violence assault if he intentionally, knowingly, or recklessly causes bodily injury to a person whose relationship or association with the actor is described by sections of the Family Code that define a dating relationship, a family relationship, or a household relationship. *See* Tex. Penal Code § 22.01(a) (defining assault causing bodily injury); *see also* Tex. Fam. Code §§ 71.0021 (defining "dating relationship"), 71.003 (defining "family"), 71.005 (defining "household"). Thus, to find appellant guilty of family violence assault, the jury must have determined beyond a reasonable doubt that appellant intentionally, knowingly, or recklessly caused bodily injury to Yang, who was a

member of appellant's family or household or was in a dating relationship with appellant. Appellant restricts his sufficiency challenge to the elements of identity and bodily injury, maintaining that the evidence was insufficient to prove that appellant was the perpetrator of the assault or that Yang suffered bodily injury.

Appellant first contends that without an in-court identification by Weber, the eyewitness to the assault, "[n]othing connected the person appearing in Court [at trial] to answer for these charges with whomever the eyewitness described was responsible for the exact same charges." Thus, he asserts that the evidence was insufficient to establish appellant's identity as the alleged perpetrator.

The State must prove beyond a reasonable doubt that the accused is the person who committed the offense charged. *Miller v. State*, 667 S.W.2d 773, 775 (Tex. Crim. App. 1984); *Lewis v. State*, No. 03-13-00275-CR, 2015 WL 1810389, at *2 (Tex. App.—Austin Apr. 16, 2015, pet. ref'd) (mem. op., not designated for publication); *Wiggins v. State*, 255 S.W.3d 766, 771 (Tex. App.—Texarkana 2008, no pet.); *Roberson v. State*, 16 S.W.3d 156, 167 (Tex. App.—Austin 2000, pet. ref'd). No one method or formalized procedure is required for the State to prove the identity of the accused. *Lewis*, 2015 WL 1810389, at *2; *Wiggins*, 255 S.W.3d at 771; *Clark v. State*, 47 S.W.3d 211, 214–15 (Tex. App.—Beaumont 2001, no pet.); *Roberson*, 16 S.W.3d at 167. Identity may be proven by direct evidence, circumstantial evidence, or even inferences. *Lewis*, 2015 WL 1810389, at *2; *Wiggins*, 255 S.W.3d at 771; *Clark*, 47 S.W.3d at 214–15; *Roberson*, 16 S.W.3d at 167; *see Jenkins*, 493 S.W.3d at 599 ("The State may prove a defendant's identity and criminal culpability by either direct or circumstantial evidence, coupled with all reasonable

inferences from that evidence." (citing *Gardner v. State*, 306 S.W.3d 274, 285 (Tex. Crim. App. 2009))). We review the totality of the circumstances to determine whether there is sufficient evidence showing that a defendant is the individual who committed the offense. *Lewis*, 2015 WL 1810389, at *2; *Becerra v. State*, No. 01-13-00807-CR, 2014 WL 2582901, at *3 (Tex. App.—Houston [1st Dist.] June 10, 2014, pet. ref'd) (mem. op., not designated for publication); *Wiggins*, 255 S.W.3d at 771; *see Rohlfing v. State*, 612 S.W.2d 598, 601 (Tex. Crim. App. 1981) (concluding "from a totality of the circumstances the jury was adequately apprised that the witnesses were referring to appellant"). The absence of an in-court identification is merely a factor for the jury to consider in assessing the weight and credibility of the witnesses' testimony. *Lewis*, 2015 WL 1810389, at *2; *Wiggins*, 255 S.W.3d at 771.

Here, although none of the witness testimony in isolation identified appellant as the man who physically assaulted Yang (by grabbing her, pushing or throwing her to the ground, and then dragging her to the car) during the altercation behind the outlet mall, the cumulative testimony of the witnesses indicated that: (1) on the afternoon of May 1, 2014, Weber observed a woman escape from a parked car and run into the adjacent field screaming and yelling and in distress, and then saw a man get out of the car, run after the woman, grab her and push or throw her to the ground, and then forcefully grab her by the arm and drag her back to the car; (2) Weber called 911 when he saw the man physically attack the woman; (3) Weber later saw the police arrest the same man that he observed in the physical altercation with the woman; (4) during the encounter with police, Weber saw the victim of the attack get into the patrol car with the man who assaulted her after he had been arrested; (5) Corporal Saavedra responded to the outlet mall and made contact with a man, whom

he identified as Boguang Li, and a very distraught woman, whom he identified as Fan Yang; and (6) the officer arrested Li based on Weber's eyewitness account of the assault to Officer Bradshaw and the injuries the officers observed on Yang, which were consistent with the physical assault Weber described. In addition, Corporal Saavedra identified appellant in court as the man he arrested for assaulting Yang the afternoon of May 1, 2014, at the outlet mall. We conclude that the cumulative evidence, and the reasonable inferences from it, was sufficient to allow the jury to rationally conclude that the person arrested on that afternoon at the outlet mall for assaulting Yang was the same person in court on trial for assaulting Yang (appellant).

Regarding the element of bodily injury, appellant argues that the evidence—which lacked testimony from Yang indicating that she felt pain—was insufficient because the State's witnesses "could never and did never confirm [that] Ms. Yang suffered 'physical pain.'" Thus, he maintains, the evidence failed to demonstrate that Yang suffered bodily injury.

The Texas Penal Code broadly defines "bodily injury" as "physical pain, illness, or any impairment of physical condition." *See* Tex. Penal Code § 1.07(a)(8). "This definition encompasses even relatively minor physical contact if it constitutes more than offensive touching." *Laster*, 275 S.W.3d at 524; *Price v. State*, No. 03-16-00128-CR, 2017 WL 1534204, at *4 (Tex. App.—Austin Apr. 20, 2017, pet. ref'd) (mem. op., not designated for publication). "Any physical pain, however minor, will suffice to establish bodily injury." *Garcia v. State*, 367 S.W.3d 683, 688 (Tex. Crim. App. 2012); *Felder v. State*, No. 03-13-00707-CR, 2014 WL 7475237, at *2 (Tex. App.—Austin Dec. 19, 2014, no pet.) (mem. op., not designated for publication); *see Price*, 2017 WL 1534204, at *4. Further, testimony that a victim experienced pain is not required to prove

bodily injury; "the jury is permitted to draw reasonable inferences from the evidence, including an inference that the victim suffered pain as a result of her injuries." *Felder*, 2014 WL 7475237, at *2 (quoting *Arzaga v. State*, 86 S.W.3d 767, 778 (Tex. App.—El Paso 2002, no pet.)); *see Hollar v. State*, No. 03-13-00445-CR, 2014 WL 4058834, at *2 (Tex. App.—Austin Aug. 14, 2014, no pet.) (mem. op., not designated for publication). A fact finder may infer that a victim actually felt or suffered physical pain because people of common intelligence understand pain and some of the natural causes of it. *Garcia*, 367 S.W.3d at 688; *Penaloza v. State*, No. 03-16-00479-CR, 2016 WL 7046821, at *3 (Tex. App.—Austin Nov. 30, 2016, no pet.) (mem. op., not designated for publication); *Felder*, 2014 WL 7475237, at *2; *Hollar*, 2014 WL 4058834, at *2; *Wingfield v. State*, 282 S.W.3d 102, 105 (Tex. App.—Fort Worth 2009, pet. ref'd); *Randolph v. State*, 152 S.W.3d 764, 774 (Tex. App.—Dallas 2004, no pet.).

In this case, Yang did not testify at trial. However, Weber, who observed the incident, described appellant's physical altercation with Yang in the field after she ran away from him. He testified that appellant grabbed Yang, pushed or threw her to the ground, picked her up "pretty forcefully" by the left arm, and dragged her back to the car by her arms. Although Weber conceded that he "[couldn't] answer if she was in deep, deep pain," he expressed that he "[didn't] think it was fun for her at all." In fact, his testimony reflects that, due to the severity of the situation, he called 911 after he observed the physical altercation and then intervened and attempted to assist Yang.

In addition, Yang was observed immediately after the altercation by the patrol officers who responded to Weber's 911 call regarding a physical assault. Corporal Saavedra testified that

Yang had bruising on her left arm, bruising on her shoulder area, a scratch on her neck, a scrape along her elbow, and "a couple of drops of blood" on her jeans or t-shirt, though they had difficulty determining where it came from. These injuries were consistent with the physical assault Weber described—particularly the bruising on Yang's left arm, which was the same arm that Weber saw appellant grab "pretty forcefully." Officer Bradshaw testified that he recalled seeing "some injuries" on Yang, specifically scratches, though at trial he could not recall where on her they were.

Evidence of an injury that in common experience would be painful suffices to establish bodily injury. *See, e.g.*, *Shah v. State*, 403 S.W.3d 29, 34-35 (Tex. App.—Houston [1st Dist.] 2012, pet. ref'd) (sufficient evidence of bodily injury because jury could reasonably infer that lesion on bridge of nose would cause physical pain); *Arzaga*, 86 S.W.3d at 778 (noting that "existence of a cut, bruise, or scrape on the body is sufficient evidence of physical pain"); *Goodin v. State*, 750 S.W.2d 857, 859 (Tex. App.—Corpus Christi 1988, pet. ref'd) (although complainant did not testify about physical pain, evidence was sufficient because of reasonable inference that bruises and muscle strain caused complainant physical pain). There is enough evidence in the record before us to conclude that the jury's inference of physical pain was reasonable. The jury was able to see and hear Weber as he gave his description of the incident, including the amount of force appellant used against Yang, as well as both officers as they testified about the injuries they observed on Yang. The jury was thus in a better position than this Court to infer whether Yang suffered physical pain because of appellant's conduct toward her. The combined and cumulative force of the evidence detailed above is sufficient for the jury, informed by common sense and knowledge of what

causes physical pain, to reasonably infer that Yang suffered "bodily injury" as a result of appellant's physical contact with her.[6]

In assessing the legal sufficiency of the evidence, the reviewing court must "give deference to 'the responsibility of the trier of fact to fairly resolve conflicts in testimony, to weigh the evidence, and to draw reasonable inferences from basic facts to ultimate facts.'" *Jenkins*, 493 S.W.3d at 599 (citing *Hooper*, 214 S.W.3d at 13 (quoting *Jackson*, 443 U.S. at 318–19)). Furthermore, jurors are free to use their common sense and apply common knowledge, observation, and experience gained in the ordinary affairs of life when giving effect to the inferences that may reasonably be drawn from the evidence. *Boston v. State*, 373 S.W.3d 832, 837 (Tex. App.—Austin 2012), *aff'd*, 410 S.W.3d 321 (Tex. Crim. App. 2013); *Eustis v. State*, 191 S.W.3d 879, 884 (Tex. App.—Houston [14th Dist.] 2006, pet. ref'd). That said, from the evidence presented in this case and the reasonable inferences from it, the jury could have reasonably found that there was evidence that appellant was the person who assaulted Yang at the outlet mall that afternoon and that Yang suffered bodily injury because of his actions. Therefore, the evidence is sufficient to establish the requisite elements of identity and bodily injury and, thus, to support appellant's conviction for family violence assault. *See Nowlin*, 473 S.W.3d at 317 ("[W]here the inferences made by the factfinder are reasonable in light of 'the cumulative force of all the evidence when considered in the light most

---

[6] We also note that the witnesses described Yang's demeanor during and after the assault, and their descriptions were consistent with someone who had suffered a traumatic event. Weber stated that Yang was "screaming and yelling," and testified that she "looked afraid" and was "definitely [in] distress." Corporal Saavedra recalled that Yang was "terrified," "upset," and "crying." Officer Bradshaw testified that Yang was "pretty distraught" and that she "cried a lot, yelled a lot."

favorable to the verdict,' the conviction will be upheld.") (quoting *Wise v. State*, 364 S.W.3d 900, 903 (Tex. Crim. App. 2012)). Accordingly, we overrule appellant's sole point of error.

CONCLUSION

Having concluded that the evidence is sufficient to support appellant's conviction for family violence assault, we affirm the trial court's judgment of conviction.

_____

Cindy Olson Bourland, Justice

Before Justices Puryear, Pemberton, and Bourland

Affirmed

Filed: May 30, 2018

Do Not Publish