COURT OF APPEALS
EIGHTH DISTRICT OF TEXAS
EL PASO, TEXAS

AIDELI LEEANETTE JIMENEZ,	§	08-20-00003-CR
Appellant,	§	Appeal from the
v.	§	County Court at Law No. 7
THE STATE OF TEXAS,	§	of El Paso County, Texas
Appellee.	§	(TC# 20170C06112)

O P I N I O N

A jury convicted Appellant Aideli Jimenez of the offense of Assault Causing Bodily Injury, a Class A misdemeanor. The trial court sentenced Jimenez to four days in the El Paso County Jail, with credit for time served. Jimenez challenges her conviction in two issues. We affirm.

I. BACKGROUND

A. Factual Background

Rudi Ceniceros[1] and her husband, Jacob Ceniceros, both testified at trial about an altercation with Jimenez, who is the mother of one of Jacob's children. Rudi and Jacob described

[1] Because Rudi and Jacob Ceniceros share a common surname, we identify each of them by their individual name to improve the clarity of the presentation.

the incident had started as a verbal altercation in their yard with Jimenez and a number of her friends and family members participating. The incident then escalated when Jimenez struck Rudi on the side of her head and face. A police officer, who responded to the scene, took photographs of Rudi's face approximately two hours after the incident, and those photographs were admitted into evidence at trial. Both Rudi and the police officer testified that the injuries to Rudi were more visible to the naked eye than what was depicted in the photographs themselves.

B. Procedural History

On July 17, 2017, an assistant district attorney for El Paso County filed an information and complaint alleging that Jimenez committed the offense of Assault Causing Bodily Injury against Rudi. Jimenez entered a plea of not guilty and a two-day trial on the merits commenced on December 9, 2019. On December 10, 2019, Jimenez was found guilty pursuant to the information and the Court assessed punishment of four days incarceration, with credit for time served. This appeal followed.

II. ISSUES

Jimenez challenges her conviction in two issues. First, Jimenez argues that certain statements during voir dire tainted the jury pool. Second, Jimenez argues the evidence was insufficient to support her conviction. We first address Jimenez' legal sufficiency challenge, then her issue related to statements made during voir dire.[2]

III. DISCUSSION

A. Whether the evidence was legally sufficient to support Jimenez' conviction.

In her second issue presented, Jimenez argues that the evidence was legally insufficient to

[2] Generally, when a party presents multiple grounds for reversal, an appellate court should first address those points that would afford the party the greatest relief. *Benavidez v. State*, 323 S.W.3d 179, 182 (Tex. Crim. App. 2010); *Lopez v. State*, 615 S.W.3d 238, 248 (Tex. App.—El Paso 2020, pet. ref'd). Here, if meritorious, Jimenez' first issue would likely warrant a new trial; however, her second issue, if meritorious, would result in an acquittal. Therefore, we address Jimenez' second issue first.

support her conviction for Assault Causing Bodily Injury against Rudi.

Standard of Review

In criminal cases, the legal sufficiency standard articulated by the United States Supreme Court in *Jackson v. Virginia*, 443 U.S. 307, 318-19 (1979), is the appropriate standard for a reviewing court to apply in determining whether the evidence is sufficient to support a conviction. *Brooks v. State*, 323 S.W.3d 893, 894-95 (Tex. Crim. App. 2010) (citing *Jackson*, 443 U.S. at 319) (finding no meaningful distinction between the legal and factual sufficiency standards and no justification for retaining both standards). Under that standard, a reviewing court must consider all evidence in the light most favorable to the verdict and in doing so must determine whether a rational justification exists for the jury's finding of guilt beyond a reasonable doubt. *Brooks*, 323 S.W.3d at 894-95 (citing *Jackson*, 443 U.S. at 319). Additionally, we treat circumstantial evidence as being as probative as direct evidence and the standard of review is therefore the same for both circumstantial and direct evidence. *See Kuciemba v. State*, 310 S.W.3d 460, 462 (Tex. Crim. App. 2010). A lack of direct evidence is not dispositive on the issue of the defendant's guilt; circumstantial evidence on its own can establish guilt. *See Guevara v. State*, 152 S.W.3d 45, 49 (Tex. Crim. App. 2004).

In considering the evidence, we keep in mind that the trier of fact is the sole judge of the weight and credibility of the evidence, and we must presume that the fact finder resolved any conflicting inferences in favor of the verdict and defer to that resolution. *See* TEX. CODE CRIM. PROC. ANN. art. 38.04; *Dobbs v. State*, 434 S.W.3d 166, 170 (Tex. Crim. App. 2014). Further we are not permitted to reevaluate the weight and credibility of the evidence or substitute our judgment for that of the fact finder. *See Isassi v. State*, 330 S.W.3d 633, 638 (Tex. Crim. App. 2010). "[S]ufficency of the evidence should be measured by the elements of the offense as defined

by the hypothetically correct jury charge for the case." *See Malik v. State*, 953 S.W.2d 234, 240 (Tex. Crim. App. 1997) (en banc). Therefore, our task is to determine, based on the evidence and reasonable inferences drawn therefrom, whether a rational juror could have found the essential elements of the charged offense beyond a reasonable doubt. *Id*.

Applicable Law

A person commits the offense of Assault Causing Bodily Injury if the person (1) intentionally, knowingly, or recklessly (2) causes (3) bodily injury to another. TEX. PENAL CODE ANN. § 22.01(a)(1). A person acts intentionally when it is his or her conscious objective to engage in the conduct or cause the result. *Id*. § 6.03(a). A person acts knowingly when she is aware that her conduct is reasonably certain to cause the result. *Id*. § 6.03(b). A person acts recklessly when she is aware of, but consciously disregards, a substantial and unjustifiable risk that the result will occur. *Id*. § 6.03(c). The risk must be of such a nature and degree that its disregard constitutes a gross deviation from the standard of care that an ordinary person would exercise under all the circumstances as viewed from the actor's standpoint. *Id*.

The element of causation is met when "the result would not have occurred but for [the actor's] conduct, operating either alone or concurrently with another cause, unless the concurrent cause was clearly sufficient to produce the result and the conduct of the actor clearly insufficient." TEX. PENAL CODE ANN. § 6.04(a). A "bodily injury" means "physical pain, illness, or any impairment of physical condition." TEX. PENAL CODE ANN. § 1.07(a)(8). "Another" means "a person other than the actor." TEX. PENAL CODE ANN. § 1.07(a)(5).

In the context of assaultive offenses, it is well-established that the victim's testimony alone, if believed by the jury, is legally sufficient to support a conviction. *See Azzam v. State*, No. 08-17-00137-CR, 2019 WL 457608, at *2 (Tex. App.—El Paso, Feb. 6, 2019, no pet.) (not

designated for publication); *State v. Vigil*, No. 08-13-00273-CR, 2015 WL 2353507, at *4 (Tex. App.—El Paso, May 15, 2015, pet. ref'd) (not designated for publication). Direct evidence that a victim suffered pain is sufficient to show bodily injury. *See Laster v. State*, 275 S.W.3d 512, 524 (Tex. Crim. App. 2009); *Azzam*, 2019 WL 457608, at *2; *Vigil*, 2015 WL 2353507, at *4. Visible evidence of the injury is not necessary to establish bodily injury. *See Azzam*, 2019 WL 457608, at *2; *Vigil*, 2015 WL 2353507, at *4.

Analysis

Here, Rudi testified that Jimenez struck her in the face with her hand. Her testimony was corroborated by her husband. The jury also heard circumstantial evidence in the form of El Paso Police Officer Matthew Knight's testimony that he observed some redness on her face that did not necessarily show in the photographs that were taken of Rudi. Finally, Rudi testified that she felt pain from the strike. We determine this evidence to be more than legally sufficient to support each element of the offense of Assault Causing Bodily Injury. As the Court of Criminal Appeals has stated, one's actions are generally reliable circumstantial evidence of the actor's intent. *Laster*, 275 S.W.3d at 524. Rudi's direct testimony is sufficient to establish the "causation" and "bodily injury to another" elements.

Jimenez argues that the evidence at trial conclusively establishes a reasonable doubt as to her guilt. First, Jimenez argues that the photographs of Rudi do not depict any injuries. However, a bodily injury, as defined in the Texas Penal Code, can be established merely by the victim feeling physical pain, which, in most instances, cannot be seen or measured by a photograph. *See* TEX. PENAL CODE ANN. § 1.07(a)(8); *see also Laster*, 275 S.W.3d at 524. If Rudi was claiming that her injury was based on a cut, for example, a photograph could possibly establish reasonable doubt, if it showed no cut where the victim indicated. However, Rudi merely claimed that her face and head

hurt for a day or so. Physical pain is inherently subjective, and both this Court and the Court of Criminal Appeals have held that a victim's testimony—if believed by the jury—that she felt pain is sufficient to establish the element of bodily injury. *See Laster*, 275 S.W.3d at 524; *Azzam*, 2019 WL 457608, at *2; *Vigil*, 2015 WL 2353507, at *4. At best, given the nature of Rudi's claimed injury, the photograph might have served to chip away at the credibility of Rudi's testimony that she felt pain.

Next, Jimenez argues that Rudi and Jacob's testimony reveals contradiction or confusion as to whether Jimenez struck Rudi on the right or left side of her face or head. Rudi testified almost entirely consistently that Jimenez struck her on the left side. At one point during cross examination, after being asked whether she was assaulted on the right side or left side, Rudi answered, "[t]he right side." Similarly, Jacob testified that Rudi was struck on the left side of her face. On cross-examination, counsel for Jimenez brought up a written statement Jacob had given to police some time after the incident where he wrote that Rudi was struck on the right side of her face. However, on re-direct, Jacob explained that he called it the right side of Rudi's face in his statement because, as he watched the assault happen, it was on his right, as he was looking at Rudi's face. This is no contradiction; from the perspective of someone looking directly at Rudi, the left side of Rudi's face would be to their right. So, with one exception, both Rudi and Jacob exclusively testified that Rudi was struck on the left side of her face. That exception was Rudi's response to one question in the middle of a line of questioning on cross-examination. Again, at most, this one contradiction might have served to chip away at Rudi's credibility as a witness.

Next, Jimenez points to testimony regarding Rudi and Jacob's prior arrests for unrelated assaults and the ongoing custody dispute between Jacob and Jimenez over their child. Jimenez also points to testimony from Damian Bustamante (Jimenez' boyfriend), who stated that Jimenez did

not strike Rudi. Finally, Jimenez argues that the recorded 911 call made by Rudi showed that Rudi was stretching the truth about what was happening outside her house.

We determine that the alleged contradictions Jimenez raises, along with the contrary testimony given by Bustamante, do not conclusively establish reasonable doubt. Instead, they go to the veracity and credibility of Rudi and Jacob's testimony. However, we are not permitted to reevaluate the weight and credibility of the evidence or substitute our judgment for that of the fact finder. *See Isassi*, 330 S.W.3d at 638. Instead, we must presume that the fact finder resolved any conflicting inferences in favor of the verdict and defer to that resolution. *See* TEX. CODE CRIM. PROC. ANN. art. 38.04; *Dobbs*, 434 S.W.3d at 170. By the jury's guilty verdict, it is clear that they chose to believe Rudi and Jacob's testimony. As we have already determined, Rudi's testimony, by itself, was legally sufficient to establish all three elements of the offense of Assault Causing Bodily Injury. As a result, Jimenez' legal sufficiency challenge is overruled.

B. Whether statements made during voir dire tainted the jury pool

In Jimenez' first issue, she argues that statements made by several members of the jury pool tainted the presumption of innocence, the right to an impartial jury, and the right to have guilt determined by proof beyond a reasonable doubt. She further argues that the trial court's response to the complained-of statements was inadequate to remove the taint as to the entire panel on the issue of presumption of innocence.

Additional Underlying Facts

At the beginning of jury selection in this case, the trial court instructed the prospective jurors that "[v]arious people may raise their hands and say that they can't be fair in this particular case for whatever the reason may be. Those people may be excused for what's known as a for-cause strike." The trial court then explained several legal principles to the panel, including

burden of proof and the presumption of innocence. The court then stated that the parties—both Jimenez and the State—were entitled to a jury "without bias or prejudice, one free of opinion as to the guilt or innocence of the accused," and "one that is impartial to both sides and that will follow the law as given to it by the Court." Finally, the Court instructed the prospective jurors that it was their duty to tell the truth when answering the parties' questions during voir dire.

The prospective jurors were reminded twice during the State's voir dire of the importance of speaking up and answering the questions presented to them honestly. During the defense's voir dire, defense counsel asked if any of the prospective jurors already thought Jimenez was guilty and the following exchange occurred:

> [Defense counsel]: . . . Presumption of innocence means that as we speak right now [Jimenez] is innocent. That is sometimes hard for some people to deal with. And it's okay. It's okay to have those feelings. It's okay to think that way. I just need to make sure that you voice that concern now. So does anybody here already think that [Jimenez] is guilty? Anybody on the first row? Second row? Third row? Does anybody in the third row already think that my client is guilty? Number 41.
>
> [Prospective Juror 41]: I don't think she's guilty, but I think--
>
> . . .
>
> [Prospective Juror 41]: I think that she's not necessarily guilty, but the defense has an uphill battle.
>
> [Defense counsel]: Why is that, sir?
>
> [Prospective Juror 41]: I spent a year on a federal grand jury. Do you want me to say more?
>
> [Defense counsel]: No.
>
> [Prospective Juror 41]: Everybody is guilty there.
>
> [Defense counsel]: So we'll make a distinction then. So you did federal grand jury, right?
>
> [Prospective Juror 41]: Right.

[Defense Counsel]: So in that scenario, you're stating that everybody there is guilty, correct?

[Prospective Juror 41]: Yes, ma'am.

. . .

[Defense counsel]: Are we in federal court today?

[Prospective Juror 41]: No, we're not.

[Defense counsel]: Okay. So do you have any knowledge of how it runs in state court?

[Prospective Juror 41]: Yes, I do.

[Defense counsel]: And in state court, do you believe that your assertion of everybody's guilty, that to be true?

[Prospective Juror 41]: To begin with, sometimes I do.

[Defense counsel]: And do you believe, because you have that belief, that you would be a fair and impartial juror?

[Prospective Juror 41]: I'm not so sure I'd be fair right now.

[Defense counsel]: Okay. That's fine. That's obviously what we want to hear. . . .

Next, defense counsel asked if any other prospective jurors agreed with Prospective Juror 41. Four prospective jurors—numbers 9, 22, 30, and 38—indicated their agreement. The following exchange occurred between defense counsel and Prospective Juror 38:

[Prospective Juror 38]: I don't necessarily believe she's guilty, but I believe the State would not bring or file frivolous charges if they didn't feel that they could prosecute with a conviction. That's my opinion.

[Defense Counsel]: If we could go off that. So you are of the belief that the State wouldn't get this far --

[Prospective Juror 38]: Bingo.

[Defense Counsel]: -- if they didn't have a case against her.

> [Prospective Juror 38]: Yes, ma'am.
>
> [Defense Counsel]: Okay. And do you under- --could you please explain to me, how is it, then, that people are found innocent?
>
> [Prospective Juror 38]: I think people are found not guilty. There's a difference between not guilty and innocent.
>
> [Defense Counsel]: So to you there's a defining between not guilty and innocent. Okay. So in law, okay, when you are found not guilty, you're presumed to be innocent, okay?
>
> [Prospective Juror 38]: I don't agree with that. I believe that the State hasn't met the burden, so there's a difference between not guilty--I'm not a legal--I'm not trained in the law, but I believe there's a distinction between not guilty and innocent.
>
> [Defense Counsel]: And because it's also compounded with the fact that the State wouldn't bring a case, right, to your belief?
>
> [Prospective Juror 38]: My understanding is that there are weighted cases. I can meet the obligation in this case and not in another. So I just feel we wouldn't be here. You said it very eloquently or succinctly that we wouldn't be here if the State couldn't prove their case. That's my opinion.

Then an unidentified prospective juror expressed a similar opinion, but was interrupted by the trial court, who stated they would speak to that prospective juror in private. The court then gave the following instruction:

> And just so the panel knows, as I told you at the beginning, an information or indictment is just the way charges are brought in court. It has no--carries no weight at all, other than that's how it brings us here. It's like when you have a divorce, the parties will file petitions making certain allegations against the other party, and that's just the way that each side is informed of what they're having to answer to. Or on a lawsuit, same thing, whoever the plaintiff is will file a petition alleging whatever they think the facts to be.
>
> And I appreciate those of you who have spoken up and indicated that for whatever reason because of your professions or your prior experiences you can't be fair in this case, but for the rest of you here, I mean, understand that the fact that we are here should be--carry no weight at all whatsoever in making your final decision. Your final decision should be based on the evidence that is presented to you once the case begins if you end up sitting

on the jury.

Prospective Jurors 9 and 22, mentioned above, were subsequently struck for cause, along with nine others. Several others were either absent, exempt, or had an issue with qualification. The State used its three peremptory strikes on Prospective Jurors 3, 10, and 16 and Jimenez chose to strike Prospective Jurors 11, 13, and 26. None of the prospective jurors given peremptory strikes appear to have been involved in the discussions above, although there was one prospective juror involved in those discussions who was not identified by number in the record. Ultimately, Prospective Jurors 5, 7, 23, 24, 25, and 27 were seated. Neither the State nor counsel for Jimenez objected to these jurors being seated, nor did either party object with regard to any of the above-described discussions.

After the presentation of evidence, the trial court reminded the six jurors that:

> An information is the means whereby a defendant is brought to trial in a misdemeanor prosecution. It is not evidence of guilt nor can it be considered by you in passing upon the issue of guilt of Aideli Leeanette Jimenez. The burden of proof in all criminal cases rests upon the State throughout the trial.
>
> All persons are presumed to be innocent and no person may be convicted of an offense unless each element of the offense is proved beyond a reasonable doubt. The fact that a person has been arrested, confined, or indicted for, or otherwise charged with the offense gives rise to no inference of guilt at her trial. The law does not require a defendant to prove her innocence or produce any evidence at all. The presumption of innocence alone is sufficient to acquit the Defendant.
>
> The prosecution has the burden of proving the Defendant guilty, and it must do so by proving each and every element of the offense charged beyond a reasonable doubt, and if it fails to do so, you must acquit the Defendant.

Applicable Law

Generally, to preserve a complaint of error for appellate review, a party must make a timely objection and obtain an adverse ruling. TEX. R. APP. P. 33.1(a). Absent an objection, a defendant

waives error unless the error may be viewed as fundamental or causing egregious harm. *Ganther v. State*, 187 S.W.3d 641, 650 (Tex. App.—Houston [14th Dist.] 2006, pet. ref'd). Egregious harm is such harm that a defendant has not had a fair and impartial trial. *Almanza v. State*, 686 S.W.2d 157, 171 (Tex. Crim. App. 1984). In such cases, the fundamental error may be raised for the first time on appeal. *See id*. Because Jimenez did not object to the above-mentioned discussions during voir dire, or to the seating of the jury, the only way her claim may be raised for the first time in this appeal is if the alleged error constitutes a fundamental error. *See Drake v. State*, 465 S.W.3d 759, 763 (Tex. App.—Houston [14th Dist.] 2015, no pet.).

The purpose of the voir dire process is to seat an intelligent, alert, and impartial jury. *Salazar v. State*, 562 S.W.2d 480, 482 (Tex. Crim. App. [Panel Op.] 1978). The purpose of the voir dire examination is to expose any bias or interest any prospective juror may have. *Price v. State*, 626 S.W.2d 833, 835 (Tex. App.—Corpus Christi 1981, no pet.). The very term "voir dire" is French for "to speak the truth." *Voir dire*, BLACK'S LAW DICTIONARY (10th ed. 2014). Thus, a panel of prospective jurors should be allowed—even encouraged—to tell the truth about their beliefs, opinions, and biases; when they do, "the interests of justice are served." *Price*, 626 S.W.2d at 835. To serve these purposes, Texas courts have found that fundamental error occurs when the trial court chills or stifles the prospective jurors' ability or desire to speak the truth.

For example, in *Drake*, the trial court criticized a prospective juror's stated bias that was based on his religious beliefs and then had the prospective juror arrested when he continued to assert that he could not fairly consider the evidence specific to the case at hand. *See Drake*, 465 S.W.3d at 761-63. There, our sister court stated—and we would agree—that "[p]unishing a juror for speaking truthfully and expressing his bias has a chilling effect on the jury's ability to respond affirmatively to questions asked during voir dire." *Id*. at 764. As a result, the trial court's act of

arresting the prospective juror, combined with comments made during voir dire about the prospective juror's religious beliefs, rose to the level of fundamental error. *Id*. at 767.

As another example, we look to *United States v. Rowe*, 106 F.3d 1226, 1230 (5th Cir. 1997), a case relied upon by the *Drake* court. In *Rowe*, a prospective juror told the judge that she could not be a fair juror in a drug case because her brother was an undercover narcotics officer and her father was also a police officer. *Id.* at 1228. In response, the judge stated that the juror would be placed on subsequent panels in the coming months so that she could "figure out how to put aside [her] personal opinions." *Id*. Then a similar encounter occurred between the judge and another prospective juror, resulting in the same threat of punishment. *Id*. at 1228-29. The *Rowe* court held that because the jurors were punished for truthfully revealing their biases, the court's actions constituted fundamental error because they "cut off the vital flow of information from venire to court." *Id*. at 1230.

Analysis

In both of those examples, the fundamental error was the court's silencing or chilling of the jury panel's expression of bias, not the panelists' expressions of bias themselves. Here, Jimenez asks us to find that the prospective jurors' truthful expressions of their bias was not only error, but fundamental error, such that the error was preserved for appellate review without objection in the trial court. We decline to do so.

Jimenez has not shown that the trial court, in any way, silenced or chilled the free flow of information. In fact, the record shows just the opposite. Here, when the prospective jurors expressed their bias, the attorneys and the trial court (1) used those statements to identify other prospective jurors who held the same biases, (2) educated the entire panel again on the presumption of innocence, burden of proof, and the purpose of the information used to charge

Jimenez, and (3) struck the appropriate jurors for cause. Practically speaking, we agree with the State that in this case, the voir dire process worked exactly as it should: it helped identify biases that would have been detrimental to a fair trial for Jimenez. Although Prospective Juror 41 ended up being outside the strike zone, if he or she had not spoken up, Prospective Jurors 9 and 22 may not have expressed their biases, which ultimately resulted in their being stricken for cause.

Jimenez has not shown that any of the prospective jurors' comments constituted fundamental error. Because Jimenez did not object in the trial court to any of those comments, she has not preserved her complaints for appellate review. As a result, Jimenez' first issue is overruled.

C. Trial Court's Certification of Appellant's Right to Appeal

As a final matter, we address the absence of Appellant's signature on the required certification of Appellant's right to appeal this case. With her notice of appeal, Appellant included a copy of the trial court's certification. We note, however, the certification does not bear Appellant's actual signature indicating she was not only informed of her rights to direct appeal but also her right to file a pro se petition for discretionary review with the Texas Court of Criminal Appeals, if desired. *See* TEX. R. APP. P. 25.2(d). Instead, the certification here shows Appellant's name in typed form above her signature line. We hold the certification is defective in its present form and has yet to be corrected by Appellant's attorney. To remedy this defect, this Court ORDERS Appellant's attorney, pursuant to TEX. R. APP. P. 48.4, to send Appellant a copy of this opinion and this Court's judgment, to notify Appellant of her right to file a pro se petition for discretionary review, and to inform Appellant of the deadlines applicable to her case. *See* TEX. R. APP. P. 48.4. Appellant's attorney is further ORDERED to comply with all of the requirements of TEX. R. APP. P. 48.4.

CONCLUSION

Finding no error, we affirm.

GINA M. PALAFOX, Justice

February 17, 2022

Before Rodriguez, C.J., Palafox, and Alley, JJ.

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