

Opinion issued June 23, 2011.



In The
Court of Appeals
For The
First District of Texas

NO. 01-10-00321-CR

PATRICK ZAMORA, Appellant
V.
THE STATE OF TEXAS, Appellee

**On Appeal from the 182nd District Court
Harris County, Texas
Trial Court Case No. 1199822**

MEMORANDUM OPINION

A jury convicted Patrick Zamora of aggravated robbery, and the trial court assessed his punishment at thirty-five years' confinement. *See* TEX. PENAL CODE ANN. §§ 12.32, 29.03 (West 2003). In two issues on appeal, Zamora contends that

the evidence is legally and factually insufficient to support his conviction. We hold that the evidence is sufficient to support Zamora's conviction. We therefore affirm the judgment of the trial court.

Background

In January 2009, during the daytime, two men, wearing hoods and handkerchiefs that covered their noses and mouths, entered the house of the complainant, John Goggin. The two men awakened Goggin from a nap. They demanded money from Goggin, and one of them pointed a gun at his face. Goggin identified Zamora in court as the man with the gun. He said that Zamora was stockier and had a rounder face than the other man. The other man was Israel Ortiz. Goggin described the gun as a black automatic .38. When Goggin told the men that he had no money, Ortiz told Zamora to shoot him. Instead, Zamora struck Goggin across the face with the gun. Goggin stated that he thought he was going to die. Ortiz and Zamora took Goggin's cell phone, watch, gold chains, rings, and bracelets. While Ortiz and Zamora rifled through Goggin's possessions, Goggin fled the room and ran out of his house. He found a cable repairman in the street and used the repairman's cell phone to call 911. During the call, Goggin saw Ortiz and Zamora exit his house without anything covering their faces. According to Goggin, he was about twenty-five yards away from Ortiz and Zamora as they exited. The two men got into a blue Jimmy Blazer driven by a woman. The

Jimmy sped off, striking Goggin's rust-colored Nissan as it left. Goggin relayed the Jimmy's license plate number to the 911 dispatcher. He said that four people were in the car, two females and two males. He testified that he recognized the woman driver as his daughter's friend.

About ten minutes later, Deputy M. Mallory of the Harris County Sheriff's Department stopped a Jimmy meeting Goggin's description a few miles from Goggin's house. He found a gun in the Jimmy. The gun was loaded with one round in the chamber ready to fire. Police officers recovered Goggin's cell phone and jewelry from the Jimmy. Goggin's watch was in Zamora's pocket.

When Goggin arrived at the scene of the stop, he identified the Jimmy as the one he had seen leaving his house. The Jimmy had a rust-colored paint mark on it from hitting Goggin's Nissan. He identified Ortiz and Zamora as the men who robbed him, based on their eyes and physical stature. He also recognized Ortiz's voice. He asked Ortiz whether he actually intended to shoot him. Ortiz responded that he did not intend to shoot Goggin and that he was sorry. Goggin identified the gun found in the car as similar to the one Zamora had used in the robbery. Deputy J. Morrow of the Harris County Sheriff's Department spoke with Goggin at the scene of the stop. He admitted that his report of the incident indicated that Ortiz had the gun, not Zamora. He testified that he may have gotten the two men's names confused.

Discussion

Standard of Review

This Court reviews legal and factual sufficiency challenges using the same standard of review. *Ervin v. State*, 331 S.W.3d 49, 54 (Tex. App.—Houston [1st Dist.] 2010, pet. ref'd) (construing majority holding of *Brooks v. State*, 323 S.W.3d 893, 912, 926 (Tex. Crim. App. 2010)). Under this standard, evidence is insufficient to support a conviction if, considering all the record evidence in the light most favorable to the verdict, no rational factfinder could have found that each essential element of the charged offense was proven beyond a reasonable doubt. *See Jackson v. Virginia*, 443 U.S. 307, 319, 99 S. Ct. 2781, 2789 (1979); *In re Winship*, 397 U.S. 358, 361, 90 S. Ct. 1068, 1071 (1970); *Laster v. State*, 275 S.W.3d 512, 517 (Tex. Crim. App. 2009); *Williams v. State*, 235 S.W.3d 742, 750 (Tex. Crim. App. 2007). Viewed in the light most favorable to the verdict, the evidence is insufficient under this standard in two circumstances: (1) the record contains no evidence, or merely a “modicum” of evidence, probative of an element of the offense; or (2) the evidence conclusively establishes a reasonable doubt. *See Jackson*, 443 U.S. at 314, 318 n.11, 320, 99 S. Ct. at 2786, 2789 n.11; *Laster*, 275 S.W.3d at 518; *Williams*, 235 S.W.3d at 750. Additionally, the evidence is insufficient as a matter of law if the acts alleged do not constitute the criminal offense charged. *Williams*, 235 S.W.3d at 750.

An appellate court determines 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. *Clayton v. State*, 235 S.W.3d 772, 778 (Tex. Crim. App. 2007) (citing *Hooper v. State*, 214 S.W.3d 9, 16–17 (Tex. Crim. App. 2007)). In viewing the record, direct and circumstantial evidence are treated equally. *Id.* 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. *Id.* An appellate court presumes that the factfinder resolved any conflicting inferences in favor of the verdict and defers to that resolution. *See Jackson*, 443 U.S. at 326, 99 S. Ct. at 2793; *Clayton*, 235 S.W.3d at 778. An appellate court also defers to the factfinder’s evaluation of the credibility and weight of the evidence. *See Williams*, 235 S.W.3d at 750.

A person commits a robbery if, in the course of committing theft and with intent to obtain or maintain control of property, he intentionally or knowingly threatens or places another in fear of imminent bodily injury or death. TEX. PENAL CODE ANN. § 29.02(a)(2) (West 2003). A person commits aggravated robbery if he commits robbery and uses or exhibits a deadly weapon. *Id.* § 29.03(a)(2) (West 2003). A firearm is considered a deadly weapon. *Id.* § 1.07(a)(17)(A) (West Supp. 2010); *see Wright v. State*, 591 S.W.2d 458, 459 (Tex.Crim.App.1979) (holding

“[t]estimony using any of the terms ‘gun,’ ‘pistol’ or ‘revolver’ is sufficient to authorize the jury to find that a deadly weapon was used” in aggravated robbery).

Analysis

Goggin testified that Zamora entered his house, struck him with his gun, and stole Goggin’s cell phone, watch, gold chains, rings, and bracelets. He feared for his life during the incident. Although Zamora’s face was partially covered, Goggin identified Zamora as the individual with the gun, explaining that he was stockier and had a rounder face than the other robber. In addition, Goggin watched both Zamora and Ortiz exit his house without anything covering their faces. At the traffic stop, Goggin identified Zamora as the individual who robbed him at gunpoint. The testimony of a single eyewitness is sufficient to support a felony conviction for aggravated robbery. *See Johnson v. State*, 176 S.W.3d 74, 77–78 (Tex. App.—Houston [1st Dist.] 2004, pet. ref’d) (holding that evidence was legally and factually sufficient to support conviction for aggravated robbery based on complainant’s testimony and identification); *see also Sosa v. State*, 177 S.W.3d 227, 230 (Tex. App.—Houston [1st Dist.] 2005, no pet.) (holding that evidence was legally sufficient where witness identified defendant based upon his build, clothing and height, and defendant was present at the scene of crime and had fled). Additional evidence corroborates Goggin’s identification of Zamora. Goggin said that Zamora fled from his residence in a blue Jimmy after it hit Goggin’s Maxima.

Police officers stopped a blue Jimmy a few miles from Goggin's residence shortly after the robbery. Zamora was in the vehicle. He had Goggin's watch in his pocket, and the other items taken from Goggin's residence were in the Jimmy. Police officers found a gun in the vehicle, and Goggins identified the gun as similar to the one Zamora pointed at him during the robbery. *See Carter v. State*, 946 S.W.2d 507, 511 (Tex. App.—Houston [14th Dist.] 1997, pet. ref'd) (concluding testimony that defendant used "gun" similar to .25 caliber automatic pistol displayed at trial was sufficient to prove he used firearm); *Arthur v. State*, 11 S.W.3d 386, 389 (Tex. App.—Houston [14th Dist.] 2000, pet. ref'd) (stating jury able to make reasonable inference that appellant used or exhibited firearm as alleged in indictment based, in part, upon witness testimony that gun was similar to or could be exhibit firearm admitted at trial). Goggins also observed that the Jimmy had paint from his Maxima on it because the Jimmy had crashed into it.

We conclude that the jury rationally could have found that each element of the charged offense was proven beyond a reasonable doubt. Accordingly, we hold that the evidence was sufficient to support Zamora's conviction for aggravated robbery. *See Brooks*, 323 S.W. 3d at 902.

Conclusion

We affirm the judgment of the trial court.

Jane Bland
Justice

Panel consists of Justices Jennings, Bland, and Massengale.

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