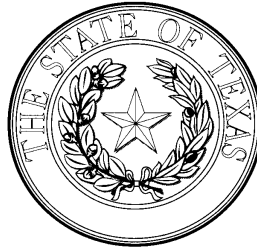


Opinion issued June 28, 2016



In The
Court of Appeals
For The
First District of Texas

NO. 01-15-00316-CR

HERMAN WHITFIELD, Appellant

V.

THE STATE OF TEXAS, Appellee

**On Appeal from the County Criminal Court at Law No. 14
Harris County, Texas
Trial Court Case No. 1976709**

MEMORANDUM OPINION

A jury found Herman Whitfield guilty of misdemeanor assault by causing bodily injury, and the trial court sentenced Whitfield to 90 days' confinement. On appeal, Whitfield contends that the proof is insufficient to support his conviction and

that the legal standard for assessing the sufficiency of the evidence is constitutionally infirm. We affirm.

BACKGROUND

The State called two witnesses: the complainant, Michael Grant, and the investigating police officer, J. Newberry.

Grant was employed as a service technician by Comcast Corporation. Comcast dispatched him to Whitfield's home to resolve problems that Whitfield was experiencing with his cable, telephone, and internet service. Grant resolved these problems. But he was unable to fulfill Whitfield's additional request to connect his smart television to the internet. Grant informed Whitfield that the problem was with the television, not the internet service. Grant advised Whitfield to contact the television's manufacturer for assistance. Whitfield became angry and told Grant that Grant was not leaving until the television was online. When Grant attempted to leave, Whitfield punched him in the left eye. Grant exited Whitfield's house and called the police.

Grant testified that Whitfield intentionally punched him. Grant experienced pain when struck, and the blow resulted in a cut underneath his eye and some swelling and redness.

Officer Newberry arrived in response to Grant's call. Newberry spoke to Grant and Whitfield. Newberry confirmed that Grant had a cut under his left eye

and that the area was swollen. Newberry photographed Grant's injuries. The State introduced these photographs into evidence. When Newberry questioned Whitfield, Whitfield offered no explanation about what had happened.

The defense called Whitfield's adult grandson, Tommy Winn. Winn arrived after Grant had phoned the police. He testified that he spoke to Grant and that Grant was uninjured.

After the jury found Whitfield guilty, he testified during the punishment phase of trial that he did not punch Grant and did not know how Grant injured his eye.

DISCUSSION

Whitfield contends that the proof is insufficient to support his conviction. He also argues that the legal standard for sufficiency of the evidence is constitutionally infirm as it does not include distinct inquiries for legal and factual insufficiency.

I. Sufficiency of the Evidence

A. Standard of Review

We apply the legal standard for sufficiency of the evidence articulated in *Jackson v. Virginia*, 443 U.S. 307 (1979). *Gear v. State*, 340 S.W.3d 743, 746 (Tex. Crim. App. 2011); *Pena v. State*, 441 S.W.3d 635, 640 (Tex. App.—Houston [1st Dist.] 2014, pet. ref'd). Under this standard, we “must consider all of the evidence in the light most favorable to the verdict and determine whether, based on that evidence and any reasonable inferences therefrom, a rational fact finder could have

found the essential elements of the crime beyond a reasonable doubt.” *Gear*, 340 S.W.3d at 746. We cannot substitute our judgment for that of the jury by reevaluating the weight or credibility of the evidence; instead, we defer to the jury’s resolution of conflicts in the evidence. *Isassi v. State*, 330 S.W.3d 633, 638 (Tex. Crim. App. 2010).

B. Applicable Law

As charged in the information, a person commits assault by intentionally or knowingly causing bodily injury to another. TEX. PENAL CODE ANN. § 22.01(a)(1) (West Supp. 2015). “Bodily injury” is defined as “physical pain, illness, or any impairment of physical condition.” *Id.* § 1.07(a)(8). This definition encompasses “even relatively minor physical contact if it constitutes more than offensive touching.” *Laster v. State*, 275 S.W.3d 512, 524 (Tex. Crim. App. 2009). A complainant’s testimony that he suffered pain or an injury that in common experience would be painful suffices to establish bodily injury. *Laster*, 275 S.W.3d at 524 (direct evidence of pain, such as the victim’s testimony that he felt pain, is sufficient to show bodily injury); *Shah v. State*, 403 S.W.3d 29, 35 (Tex. App.—Houston [1st Dist.] 2012, pet. ref’d) (pain and some of its natural causes are within understanding of persons of ordinary intelligence and pain therefore may be inferred from certain injuries).

An act is intentional if it is the person's "conscious objective or desire to engage in the conduct or cause the result." TEX. PENAL CODE ANN. § 6.03(a) (West 2011). An act is knowing with respect to the nature of conduct if the person "is aware of the nature of his conduct" and with respect to a result if "his conduct is reasonably certain to cause the result." *Id.* § 6.03(b). A person's conduct generally is reliable circumstantial proof of his intent. *See Laster*, 275 S.W.3d at 524 (jury could reasonably infer that defendant "intended to do exactly what he did—to inflict bodily injury").

C. Analysis

Grant testified that Whitfield became angry and intentionally struck him in the eye with his fist. Grant felt pain. He sustained a cut below the eye and the area around it swelled and reddened. The jury viewed photographic evidence of the injury. This proof is sufficient to permit rational jurors to find that Whitfield intentionally caused Grant bodily injury beyond a reasonable doubt. *See Laster*, 275 S.W.3d at 524; *Shah*, 403 S.W.3d at 35. Though Whitfield's grandson testified that Grant was not in fact injured, this testimony presents a conflict in the evidence, which is within the jury's province to resolve. *See Isassi*, 330 S.W.3d at 638. We therefore hold that the evidence is sufficient to support Whitfield's conviction for misdemeanor assault. *See Gear*, 340 S.W.3d at 746.

II. Constitutional Challenge to Standard of Review

We apply the standard of review articulated in *Jackson* to both legal and factual sufficiency challenges to a conviction. *Brooks v. State*, 323 S.W.3d 893, 912 (Tex. Crim. App. 2010); *Carmichael v. State*, 416 S.W.3d 133, 135 (Tex. App.—Houston [1st Dist.] 2013, no pet.). Whitfield contends that doing so deprives him of due process rights.

In *Jackson*, however, the United States Supreme Court defined the evidentiary sufficiency review standard that satisfies due process. 443 U.S. at 315–19; *see also Rabb v. State*, 434 S.W.3d 613, 616 (Tex. Crim. App. 2014) (referring to the *Jackson* standard as a “due-process guarantee”). The Texas Court of Criminal Appeals has directed us to apply *Jackson*’s legal standard to all evidentiary insufficiency claims, whether legal or factual; as a lower court, we are bound to follow its directive. *Kiffe v. State*, 361 S.W.3d 104, 109–10 (Tex. App.—Houston [1st Dist.] 2011, pet. ref’d) (court obligated to apply *Jackson*’s legal sufficiency standard); *see also Jones v. State*, 458 S.W.3d 625, 632 (Tex. App.—Houston [1st Dist.] 2015, pet. ref’d) (refusing to apply pre-*Brooks* factual sufficiency standard).

CONCLUSION

We affirm the judgment of the trial court.

Jane Bland
Justice

Panel consists of Justices Bland, Brown, and Lloyd.

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