Affirmed and Memorandum Opinion filed March 29, 2016.

In The

Fourteenth Court of Appeals

NO. 14-15-00154-CR

ANTHONY SCOTT PLASTER, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the 149th District Court
Brazoria County, Texas
Trial Court Cause No. 73809

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

Appellant Anthony Scott Plaster appeals his conviction for aggravated robbery. In a single issue he challenges the sufficiency of the evidence to support his conviction. We affirm.

I. FACTUAL AND PROCEDURAL BACKGROUND

On the night of the offense, the complainant was working as a cashier at a convenience store in Freeport, Texas, when two men walked into the store wearing

bandanas that covered their faces. The complainant thought it was a joke until she saw one of the men brandishing a box cutter. The man with the box cutter, whom the complainant later identified as appellant, walked behind the counter and said, "Give it to me," referring to the money. Typically, store personnel would place the night's receipts into a cigar box before taking them to be deposited at the bank. The man took the money in the cigar box and the money in the cash register. The complainant identified appellant as the man who demanded the money. The complainant testified that she was afraid for her life and "[o]f being raped more than anything."

The complainant further testified that she had seen appellant in the convenience store before. When appellant came into the store he was frequently accompanied by a woman named Margaret Davis.

Margaret Davis testified that on the night of the offense appellant called her and told her to pack a bag because they were going to a motel to spend some time together. Appellant's brother gave Davis $200 in cash to pay for the motel room. Davis was surprised that appellant or his brother had that much cash. When Davis asked appellant why he and his brother had so much cash, he admitted robbing the convenience store. The next day Davis overheard appellant's brother scolding appellant for admitting the robbery to Davis.

The jury convicted appellant of aggravated robbery and the trial court assessed punishment, enhanced by two prior convictions, at sixty years' confinement in the Institutional Division of the Texas Department of Criminal Justice.

II. ISSUE AND ANALYSIS

In a single issue appellant challenges the sufficiency of the evidence to support his conviction. Specifically, appellant challenges the evidence supporting the jury's

finding of identity and the finding that the complainant was placed in fear of imminent bodily injury.

In evaluating a challenge to the sufficiency of the evidence supporting a criminal conviction, we view all of the evidence in the light most favorable to the verdict. *Wesbrook v. State*, 29 S.W.3d 103, 111 (Tex. Crim. App. 2000). The issue on appeal is not whether we, as a court, believe the State's evidence or believe that appellant's evidence outweighs the State's evidence. *Wicker v. State*, 667 S.W.2d 137, 143 (Tex. Crim. App. 1984). The verdict may not be overturned unless it is irrational or unsupported by proof beyond a reasonable doubt. *Matson v. State*, 819 S.W.2d 839, 846 (Tex. Crim. App. 1991). The trier of fact "is the sole judge of the credibility of the witnesses and of the strength of the evidence." *Fuentes v. State*, 991 S.W.2d 267, 271 (Tex. Crim. App. 1999). The trier of fact may choose to believe or disbelieve any portion of the witnesses' testimony. *Sharp v. State*, 707 S.W.2d 611, 614 (Tex. Crim. App. 1986). When faced with conflicting evidence, we presume the trier of fact resolved conflicts in favor of the prevailing party. *Turro v. State*, 867 S.W.2d 43, 47 (Tex. Crim. App. 1993). Therefore, if any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt, we must affirm. *McDuff v. State*, 939 S.W.2d 607, 614 (Tex. Crim. App. 1997).

A. Is the evidence sufficient to support the jury's finding that appellant was the individual who committed the aggravated robbery?

A person commits robbery if, in the course of committing theft, 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 2011). A person commits aggravated robbery if he commits robbery and uses or exhibits a deadly weapon. *Id*. § 29.03.

Appellant argues the evidence does not support his identity as the perpetrator

of the robbery. According to appellant, the complainant's identification was suspect because she did not fully describe the perpetrators or their clothing to responding officers. The complainant, however, positively identified appellant in a pretrial photospread and in court as the person who robbed her. A victim's unequivocal in-court identification is sufficient to establish the identity of the perpetrator of a robbery. *See Jones v. State*, 687 S.W.2d 430, 432 (Tex. App.—Houston [14th Dist.] 1985, no pet.).

Moreover, appellant admitted to Davis, his girlfriend, that he obtained a large sum of cash from robbing the convenience store. An extrajudicial confession is sufficient to establish the perpetrator's identity. *See Emery v. State*, 881 S.W.2d 702, 705 (Tex. Crim. App. 1994).

The jury had before it all of the relevant information concerning the identification of appellant, and, as fact finder, the jury had the duty to determine the credibility of the witnesses' testimony and to decide the weight to be given the evidence. *See Garza v. State*, 633 S.W.2d 508, 514 (Tex. Crim. App. 1981) (opin. on reh'g); *see also Santos v. State*, 116 S.W.3d 447, 460 (Tex. App.—Houston [14th Dist.] 2003, pet. ref'd). Viewing the evidence in the light most favorable to the verdict, we conclude the evidence is sufficient to support the jury's finding that appellant was the perpetrator of the robbery.

B. Is the evidence sufficient to support the jury's finding that the complainant was placed in fear of imminent bodily injury or death?

Appellant argues that the record indicates the complainant was not in fear of imminent bodily injury or death because she originally thought the men entering with bandanas over their faces were playing a joke.

The record reflects that the complainant became fearful when she saw that one of the men, appellant, was carrying a box cutter. Appellant demanded that the

complainant give him all the money. After the complainant gave him the cigar box containing the daily receipts, appellant came behind the counter and took all of the money in the cash register. The complainant testified that while she initially thought the two men wearing bandanas were "joking," as soon as she saw the box cutter and they demanded money, she was afraid and understood they were not joking, but were robbing her. The complainant testified that she feared for her life and was afraid she would be sexually assaulted.

The theft aspect of robbery creates a situation in which fear is more likely to occur, even in the absence of an actual threat. A person who has a weapon, and says, "Give me your money," has committed a robbery even if an actual threat has not been conveyed. *See Plummer v. State*, 410 S.W.3d 855, 862 (Tex. Crim. App. 2013) (holding that a deadly weapon provides intimidation value that assists in a robbery if it is exhibited or displayed even if the weapon is not overtly used); *Boston v. State*, 410 S.W.3d 321, 326–27 (2013) (holding that "[B]randishing a firearm is not the only way in which a person can be threatened or placed in fear in accordance with the [robbery] statute").

The complainant testified that appellant was holding a box cutter and demanded the money. When she gave him the day's receipts in the cigar box, appellant came behind the counter and took the money from the cash register. The complainant further testified that she was afraid for her life and "[o]f being raped more than anything." Under these circumstances the jury could have found beyond a reasonable doubt that the complainant was placed in imminent fear of bodily injury or death.

C. Was the evidence rendered insufficient to support the conviction because Davis's testimony was not credible?

Appellant further argues that the evidence is insufficient because Davis's

testimony lacked credibility. Specifically, appellant refers to her testimony about how appellant obtained a large amount of cash and his admission of guilt. We do not address the credibility of witnesses in a sufficiency-of-the-evidence review. The jury was entitled to weigh Davis's testimony and credibility and accept or reject it. *See Terry v. State*, 397 S.W.3d 823, 832 (Tex. App.—Houston [14th Dist.] 2013, pet. ref'd), citing *Fuentes*, 991 S.W.2d at 271 (the trier of fact "is the sole judge of the credibility of the witnesses and of the strength of the evidence").

Viewing the evidence in the light most favorable to the verdict, the evidence is sufficient to support beyond a reasonable doubt that appellant committed the robbery and placed the complainant in imminent fear of serious bodily injury or death. We overrule appellant's sole issue.

We affirm the trial court's judgment.

/s/ Kem Thompson Frost
Chief Justice

Panel consists of Chief Justice Frost and Justices Boyce and Wise.
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