Affirmed and Memorandum Opinion filed September 7, 2017.

In The

Fourteenth Court of Appeals

NO. 14-16-00712-CR

JOHN THOMAS PATRICK, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the 178th District Court
Harris County, Texas
Trial Court Cause No. 1421531

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

The trial court convicted appellant, John Thomas Patrick, of aggravated robbery with a deadly weapon. *See* Tex. Penal Code Ann. §§ 29.02(a), 29.03(a)(2) (West 2011). The court assessed punishment at confinement for 30 years. In two issues, appellant contends: (1) the evidence is insufficient to support his conviction because the complainant's testimony identifying appellant is unreliable; and (2) the evidence is insufficient to support the trial court's finding that a deadly weapon was

used in the commission of the offense. We hold that the evidence is sufficient to support appellant's conviction for aggravated robbery and the trial court's finding that a deadly weapon was used in the commission of the offense. We therefore affirm the judgment of the trial court.

BACKGROUND

On the day of the offense, the office manager at Salem Evangelical Lutheran Church was in the church office when she looked up and saw appellant standing in the doorway carrying a knife. Appellant was wearing blue jeans with no shirt. A white shirt was tied around appellant's face, covering it from the nose down. The office manager described the knife as having a six-inch blade and a four-to-five-inch handle.

Appellant approached the office manager while holding the knife up. Appellant attempted to tie her hands with a ribbon but asked for her jewelry first. The office manager took off her necklace and placed it on her desk. When appellant asked for money she handed him her wallet. Appellant then tied her hands with a ribbon similar to one used in the church. After tying the office manager's hands behind her back, appellant asked where the "money room" was. She told appellant that the church did not have a money room. Appellant walked the office manager through the church with her hands tied looking for the money room. The office manager explained that the church does not keep money on site. Appellant took her back to her office with her hands still tied.

Appellant saw the keys to the office manager's truck on her desk and asked which vehicle belonged to her. Appellant took the keys and tried to open the music room down the hall. While appellant was out of the office, the office manager freed her hands and dialed 911. When appellant did not return, the office manager looked out of the office window and saw appellant walking away. He had removed the shirt

from his face and put it back on. Appellant stole the office manager's truck from the parking lot.

According to the office manager, appellant held the knife the entire time he interacted with her. She later learned that she had marks on her arms from the knife. Although she recognized appellant, she did not remember his name; she only remembered that he had "three first names." The church sent an email to other churches in the area explaining the incident and describing appellant. One of the churches responded with a message and a Texas Department of Criminal Justice offender card bearing appellant's name and picture. The office manager was later summoned to the police station, where she identified appellant in a line-up.

Officer John Varela of the Houston Police Department confirmed that the office manager positively identified appellant in a line-up at the police station. Varela admitted on cross-examination that his report on the identification contained a typographical error. The report reflected that the office manager identified the person in position number one in the line-up. Varela testified that the report was incorrect; the office manager identified the person in position number three, which was appellant.

At the conclusion of a bench trial, the trial court found appellant guilty as charged in the indictment.

ANALYSIS

Appellant challenges the sufficiency of the evidence to support his identification as the perpetrator and the trial court's deadly weapon finding.

I. Sufficient evidence supports appellant's identification as the assailant.

In reviewing the sufficiency of the evidence to support a conviction, we determine "whether, after viewing the evidence in the light most favorable to the

prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *Johnson v. State*, 364 S.W.3d 292, 293–94 (Tex. Crim. App. 2012) (quoting *Jackson v. Virginia*, 443 U.S. 307, 319 (1979)). In making this review, an appellate court considers all evidence in the record, whether it was admissible or inadmissible. *Winfrey v. State*, 393 S.W.3d 763, 767 (Tex. Crim. App. 2013) (citing *Dewberry v. State*, 4 S.W.3d 735, 740 (Tex. Crim. App. 1999)). The fact finder is the sole judge of the credibility of witnesses and the weight afforded their testimony. *Montgomery v. State*, 369 S.W.3d 188, 192 (Tex. Crim. App. 2012). The fact finder may reasonably infer facts from the evidence as it sees fit. *See Canfield v. State*, 429 S.W.3d 54, 65 (Tex. App.—Houston [1st Dist.] 2014, pet. ref'd). The fact finder alone decides whether to believe eyewitness testimony, and the fact finder resolves any conflicts in the evidence. *Bradley v. State*, 359 S.W.3d 912, 917 (Tex. App.—Houston [14th Dist.] 2012, pet. ref'd). Therefore, the testimony of a single eyewitness can be enough to support a conviction. *Id*. (citing *Aguilar v. State*, 468 S.W.2d 75, 77 (Tex. Crim. App. 1971)).

A person commits aggravated robbery if, (1) in the course of committing theft and (2) with intent to obtain or maintain control of property, (3) the person knowingly or intentionally (4) threatens or places another in fear of imminent bodily injury or death and (5) uses or exhibits a deadly weapon. Tex. Penal Code Ann. §§ 29.02(a), 29.03(a)(2).

Appellant's first issue challenges the sufficiency of the evidence to support the finding that he was the person who committed the aggravated robbery. Appellant contends that the office manager's identification was unreliable because appellant's face was covered with a T-shirt during the robbery, the office manager thought the man who robbed her was in his twenties, and the offense report indicated that the office manager identified a person different from appellant during the line-up. None

of these discrepancies, however, requires reversal of appellant's conviction. *See Bradley v. State*, 359 S.W.3d 912, 917 (Tex. App.—Houston [14th Dist.] 2012, pet. ref'd) ("It was the jury's role to decide whether that testimony was credible, and we will not disturb the jury's decision."). The fact finder, in this case the trial court, may resolve any conflicts or inconsistencies in the evidence. *Id*.; *Garcia v. State*, 57 S.W.3d 436, 441 (Tex. Crim. App. 2001), *cert. denied*, 537 U.S. 1195 (2003). The trial court therefore was not required to disregard the office manager's testimony simply because appellant believes parts of her testimony were inconsistent. *See Price v. State*, 502 S.W.3d 278, 282–83 (Tex. App.—Houston [14th Dist.] 2016, no pet.).

The office manager testified that she had seen appellant earlier the day of the robbery. At the time of the robbery, appellant was wearing the same clothes she had seen him wearing earlier in the day. The office manager testified that she immediately recognized appellant despite his attempt to cover his face and that she saw him with his face uncovered after the robbery.

The office manager also testified that she recognized appellant's voice from her previous interactions with him. She explained that the church is part of an organization that ministers to homeless people in the area. She knew appellant as one of the homeless people who live in the area around the church. She had interacted with appellant five to seven times before the robbery. Appellant occasionally asked the office manager for money from the church. The office manager explained to appellant that the church's ministry to the homeless is conducted through Braes Interfaith Ministry, and the church does not keep money on site to give to him or anyone else. Appellant came into the church office once and asked for someone to make copies. The office manager volunteered to make copies for him; at this time she learned appellant's full name. She spoke with appellant

about the fact that he has "three first names," which she found unusual.[1]

Officer Varela testified that the notation of the incorrect position in the police report was a typographical error and the office manager, in fact, had identified appellant as the person who robbed her. On this record, we conclude a rational trier of fact could have concluded beyond a reasonable doubt that appellant committed aggravated robbery. *See Price*, 502 S.W.3d at 283 (observing fact finder is not required to disregard testimony simply because parts of it were inconsistent with other testimony). We therefore hold the evidence is sufficient to support appellant's conviction, and we overrule his first issue.

II. Sufficient evidence supports the trial court's finding that the knife was a deadly weapon.

Appellant's second issue challenges the trial court's finding that appellant used a deadly weapon in the robbery. A knife is not a deadly weapon per se, but the State may "prove a particular knife to be a deadly weapon by showing its size, shape, and sharpness, the manner of its use or intended use, and its capacity to produce death or serious bodily injury." *Blain v. State*, 647 S.W.2d 293, 294 (Tex. Crim. App. 1983). Expert testimony is not required. *Id*. A fact finder may consider all of the facts of the case in determining the deadliness of a weapon. *Id*.; *Clark v. State*, 444 S.W.3d 671, 678 (Tex. App.—Houston [14th Dist.] 2014, pet. ref'd).

Factors to consider in determining whether the knife qualified as a deadly weapon include (1) the size, shape, and sharpness of the knife; (2) the manner in which appellant used the knife; (3) the nature of any inflicted wounds; (4) evidence concerning the knife's life-threatening capabilities; and (5) the words appellant

[1] During the office manager's interactions with appellant, she formed an opinion that he was a young man in his twenties. On cross-examination, the office manager noted that she was surprised to learn that appellant was 50 years old because he looked younger.

spoke. *See Tisdale v. State*, 686 S.W.2d 110, 111 (Tex. Crim. App. 1984); *Banargent v. State*, 228 S.W.3d 393, 398 (Tex. App.—Houston [14th Dist.] 2007, pet. ref'd).

In this case, the question to be answered is whether the knife appellant wielded was, in the manner of its use or intended use, capable of causing death or serious bodily injury. Whether a knife is "capable" enough to constitute a deadly weapon depends less on opinion evidence and more on what the evidence in a given case shows as to "the manner of its use or intended use." *See Tisdale v. State*, 686 S.W.2d at 116–17 (op. on reh'g) (Clinton, J. concurring); *see also Blain*, 647 S.W.2d at 294.

After reviewing the record evidence in the light most favorable to the trial court's finding, we hold there is sufficient evidence to sustain the deadly-weapon finding. The record shows that appellant walked toward the office manager wielding a knife in a manner in which the office manager felt threatened. The blade of the knife was described as six inches long with a four-to-five-inch handle. The office manager felt threatened by the knife, allowing appellant to tie her hands. Later, she discovered marks on her arm from the knife. Based on the office manager's testimony, the trial court reasonably could have inferred that the knife was large enough and long enough to cause serious bodily injury or death. In addition, the trial court reasonably could have inferred from appellant's proximity to the office manager and brandishing of the knife that the manner in which he used the knife, or intended to use the knife, rendered it capable of causing serious bodily injury or death.

The record also shows that a fact finder rationally could have concluded that the knife was exhibited and used in the commission of the offense. *See Tisdale*, 686 S.W.2d at 115. Appellant takes issue with the lack of specific evidence that appellant made any explicit threats to the office manager or that the office manager was attacked in any way. This sort of direct evidence is not required, however. Rather, it

is for the fact finder to determine whether an individual used a knife as a deadly weapon by weighing the evidence before it on a case-by-case basis and using that evidence to draw reasonable inferences. *Isassi*, 330 S.W.3d at 638. Here, the trial court reasonably could have inferred that the knife the office manager described was used or exhibited as a deadly weapon. Appellant held the knife up while he approached the office manager in her office and demanded her jewelry and money. Appellant also carried the knife while he walked her through the church offices looking for the "money room."

Viewing the evidence in the light most favorable to the trial court's finding, we hold there was sufficient evidence for a rational trier of fact to find beyond a reasonable doubt that appellant used or exhibited a deadly weapon. *See Gear*, 340 S.W.3d at 746. Therefore, we overrule appellant's second issue.

CONCLUSION

Having overruled each issue raised by appellant, we affirm the trial court's judgment.

/s/ J. Brett Busby
Justice

Panel consists of Chief Justice Frost and Justices Jamison and Busby.
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