



Fourth Court of Appeals
San Antonio, Texas

MEMORANDUM OPINION

No. 04-15-00163-CR

Elias **RAMON-SANCHEZ**,
Appellant

v.

The **STATE** of Texas,
Appellee

From the 2nd 25th Judicial District Court, Guadalupe County, Texas
Trial Court No. 14-0486-CR-A
Honorable W.C. Kirkendall, Judge Presiding

Opinion by: Karen Angelini, Justice

Sitting: Sandee Bryan Marion, Chief Justice
Karen Angelini, Justice
Patricia O. Alvarez, Justice

Delivered and Filed: April 27, 2016

AFFIRMED; AFFIRMED AS MODIFIED

A jury found Elias Ramon-Sanchez guilty on three counts of aggravated assault. The jury also answered affirmatively a special instruction asking whether Ramon-Sanchez used or exhibited a deadly weapon—a motor vehicle—in the commission of each offense. On each count, the jury assessed punishment at five years' confinement and a \$5,000 fine; eight years' confinement and a \$1,000 fine; and eight years' confinement with a \$1,000 fine, respectively. The trial court probated the terms of confinement on counts two and three for ten years. The court also imposed a total of \$698 in court costs, and ordered restitution for each of the three complainants. On appeal, Ramon-

Sanchez raises two issues: (1) the evidence is legally insufficient to support the convictions because the evidence does not show intentional, knowing, or reckless conduct; and (2) the restitution amount for count one should be reduced to reflect three months' lost wages by the complainant, instead of five months' lost wages. We overrule Ramon-Sanchez's first issue, sustain his second issue, affirm the trial court's judgments on counts two and three, and affirm the trial court's judgment on count one as modified.

SUFFICIENCY OF THE EVIDENCE

In his first issue, Ramon-Sanchez asserts the evidence is legally insufficient to show he acted intentionally, knowingly, or recklessly when the vehicle he was driving struck the three complainants. Ramon-Sanchez contends the evidence shows, at most, only criminally negligent conduct.

A. Standard of Review and Relevant Law

When reviewing legal sufficiency, we view all the evidence in the light most favorable to the verdict and determine whether a rational trier of fact could have found the essential elements of the offense beyond a reasonable doubt. *Jackson v. Virginia*, 443 U.S. 307, 319 (1979). We defer to the jury's assessment of the credibility of the witnesses and the weight to be given to their testimony, and resolve any inconsistencies in the evidence in favor of the judgment. *Brooks v. State*, 323 S.W.3d 893, 899 (Tex. Crim. App. 2010); *Curry v. State*, 30 S.W.3d 394, 406 (Tex. Crim. App. 2000).

As relevant here, a person commits an assault "if the person . . . intentionally, knowingly, or recklessly causes bodily injury to another . . ." TEX. PENAL CODE ANN. § 22.01(a)(1) (West Supp. 2015). A person commits aggravated assault if the person commits assault as defined in section 22.01 "and the person: (1) causes serious bodily injury to another[;] or (2) uses or exhibits a deadly weapon during the commission of the assault." *Id.* § 22.02 (West 2011).

The Texas Penal Code defines the pertinent culpable mental states required under section 22.01 as follows:

(a) A person acts intentionally, or with intent, with respect to the nature of his conduct or to a result of his conduct when it is his conscious objective or desire to engage in the conduct or cause the result.

(b) A person acts knowingly, or with knowledge, with respect to the nature of his conduct or to circumstances surrounding his conduct when he is aware of the nature of his conduct or that the circumstances exist. A person acts knowingly, or with knowledge, with respect to a result of his conduct when he is aware that his conduct is reasonably certain to cause the result.

(c) A person acts recklessly, or is reckless, with respect to circumstances surrounding his conduct or the result of his conduct when he is aware of but consciously disregards a substantial and unjustifiable risk that the circumstances exist or the result will occur. 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. § 6.03(a)-(c).

A person may act “with criminal negligence, or is criminally negligent, with respect to circumstances surrounding his conduct or the result of his conduct when he ought to be aware of a substantial and unjustifiable risk that the circumstances exist or the result will occur.” *Id.* § 6.03(d). “The risk must be of such a nature and degree that the failure to perceive it 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.*

B. Factual Background

On the evening of January 11, 2014, four friends—Arnulfo Hernandez, Iracu Urbiola, Randy Riojas, and Janet Guevara—met for an evening of socializing. The four initially all gathered at the home of Riojas, and later went to the Varsity Bar in Seguin, Texas. At the Varsity Bar, they drank beer and played pool for about an hour; and then they went to another bar, The

Full Moon Saloon, to dance and drink. When it got close to closing time, the foursome decided to leave the bar and go somewhere to eat.

Arnulfo Hernandez and his girlfriend, Iracu Urbiola, left the bar first and walked toward Hernandez's truck. Hernandez testified that, as they approached his truck, he looked back and saw "[a] guy swinging," but he did not know what he was swinging at. Urbiola testified she saw a man—later identified as Ramon-Sanchez—and a woman arguing inside the Full Moon Saloon. Urbiola said that when she and Hernandez walked outside, she saw the same couple also outside and still arguing. Hernandez and Urbiola got inside Hernandez's truck, but because Randy Riojas and Janet Guevara had not yet joined them, Hernandez got out of his truck to find his friends. At some point, Urbiola saw "somebody pushing" Guevara. She also saw Hernandez and Riojas "trying to fight somebody." Urbiola stated she saw the fight end, Ramon-Sanchez get into his vehicle and back up, and her friends walk towards Hernandez's truck where she sat waiting. She saw Ramon-Sanchez drive toward her three friends, at which time the headlights of his vehicle were on and nothing obstructed his view of her friends. She then watched as Ramon-Sanchez drove forward "pretty fast," spun his tires on the gravel, hit a dumpster hard enough to move it, and ran over her friends with his vehicle. Urbiola said Ramon-Sanchez turned his vehicle around and dragged her friends toward her. Urbiola said she got out of the truck to help, as Ramon-Sanchez drove away. Hernandez described the events as follows:

I remember the tire running over me, and reversing, and it stopped on my waist, I think. And that was about — my stomach was about to blow, and the vehicle went forward. And then I looked back to see if he was going to reverse again, and I [saw] the tire come back. And I just laid down flat, and I don't remember anything else.

Riojas testified that he and his fiancé, Janet Guevara, stayed behind in the Full Moon Saloon to continue dancing. He said when he and Guevara exited the bar, they heard Ramon-Sanchez and a woman arguing. Riojas said he did not intend to interfere, but Guevara wanted to

stop “what was going on between the man and the woman.” At this point, Riojas was walking in front of Guevara, but when he heard Guevara say something, he turned around and saw Ramon-Sanchez push Guevara. Riojas said he then “went at” Ramon-Sanchez and punched him. Riojas admitted that when Ramon-Sanchez fell to the ground, he got on top of Ramon-Sanchez and continued to hit him. He said Guevara pulled him off Ramon-Sanchez, and he and she then started to walk away. However, when Hernandez approached, Hernandez, Riojas, and Ramon-Sanchez began to fight again. When asked why they continued to fight, Riojas responded, “because [Ramon-Sanchez] was still coming at us. We just got him on the ground again and fought some more.” Riojas said he hit Ramon-Sanchez with only his hands; he did not kick him or hit him with a bottle or any other weapon. Riojas also said Hernandez did not hit Ramon-Sanchez with any weapon. At some point, all three men stopped fighting, and everyone walked toward their own vehicles.

Riojas testified that as he, Hernandez, and Guevara walked towards their truck, he “heard like a screeching sound [like tires peeling out], like [Ramon-Sanchez] drove off.” Riojas said Ramon-Sanchez did not leave, and instead, he drove towards them. Riojas said he did not see the vehicle before he was hit; he saw only “headlights and smoke.” He said the next thing he remembered after being hit was “trying to get out. I guess I got — I got hung up under the truck, and somehow I was able to get out before he got over me with the back tires.”

Guevara testified she and her friends decided to leave the Full Moon Saloon to get something to eat, but she and Riojas delayed leaving because they wanted to dance to one more song. She said that as she and Riojas stepped out of the bar, she saw Ramon-Sanchez and a woman arguing, and the man grab the woman by her arms. Because she thought the man was going to hit the woman, Guevara decided to intervene because she had once been in an abusive relationship.

Guevara said she yelled, "Leave her alone. Don't hit her,"¹ and she either pushed the man and woman apart or she only pushed the man away. Guevara said the woman then ran away and Ramon-Sanchez either pushed or hit her [Guevara], which is when Riojas punched Ramon-Sanchez who fell to the ground. Guevara told Riojas, "That's enough, leave him alone, let's go, it's done, it's over." According to Guevara, she and Riojas began to walk away when Hernandez arrived and the three men began fighting again. After this fight, she said, "[s]omehow [Ramon-Sanchez] was in his vehicle; and [Riojas] was on the passenger side, still trying to hit him. And I had ahold of him, of [Riojas], pulling him away from the vehicle." She stated that Hernandez was on the driver's side of Ramon-Sanchez's vehicle. According to Guevara, Ramon-Sanchez said he was leaving; and she, Riojas, and Hernandez began walking towards their vehicle, which is when she "saw headlights coming straight towards us, or towards me." Ramon-Sanchez struck Guevara, Riojas, and Hernandez from behind with his truck. All three complainants suffered serious injuries and were transported to the hospital.

Ramon-Sanchez testified in his own behalf about the events of the evening. He testified he was at the Full Moon Saloon with Diana Reyes when he decided he did not feel well and he wanted to leave. He said he stepped outside, saw two men and a woman, which he thought nothing of. According to Ramon-Sanchez, he told Reyes he was leaving and asked her if she was coming. When she refused, he grabbed her, but he could not remember if he grabbed her hand or her arm. He said Reyes freed her hand from his, and he said, "Well, okay, I'm leaving." When one of the two men said, "Hey, leave her alone," Ramon-Sanchez said he just looked at the man and said, "What? I'm leaving. She's with me. I can't leave her [here.]" Ramon-Sanchez denied putting his

¹ On cross-examination, Guevara testified that she said "Stop. What the hell is wrong with you? Don't be hitting on her."

hands on Guevara. He said “all of a sudden” the two men started hitting and punching him.

Ramon-Sanchez described the beating as follows:

While I was on the ground, they hit me. They — they took me down. They stomped me down. I remember my face being down on the ground. I feel a foot right here (indicating), and then [they] kick[ed] me all over my back and my side.

Ramon-Sanchez identified photos of his bloodied watch on the ground, and his prescription glasses also on the ground. He identified photos showing his face with bumps, bruises, cuts, and blood. Ramon-Sanchez stated that, as a result of the beating, he suffered a half-paralyzed left leg and an injured shoulder.

He said he managed to get himself inside his vehicle, he lowered the windows, “and then the next thing [he] knew, they got me, right back at me from both sides.” Ramon-Sanchez denied saying anything to Hernandez or Riojas to provoke another attack; he said he did not fight back when the men hit him while he was inside his vehicle; and when the men left, he did not know where they went. He said he “start[ed] blurring [because he did not have his glasses], [and there was] blood all over in my face, and I lost it completely.” Ramon-Sanchez claimed he was panicked, disoriented, and confused; he was in fear for his life; and he “just took off.” When asked his intent when he started to leave, Ramon-Sanchez replied, “Nothing. Just to get out [of] there. I was panicking and I was in fear for my life.” When asked if he remembered hitting anything in the parking lot, Ramon-Sanchez responded, “Well, I remember once I started going forward, I remember [the] truck stuck somehow, and I backed up again. And then I put it in drive, and it finally got away, and that’s all I know. I finally got off of somewhere in the road, and I don’t know what road.” He admitted that he “got stuck” in the parking lot and, in order to get “unstuck,” he backed up and then went forward. He said that although he saw no weapons, he was afraid Hernandez and Riojas “were coming with knives and [sic] shoot me or something.” Ramon-Sanchez said he did not call the police to report the assault on him, and he admitted he did not tell

the police investigator (to whom he spoke the day after the incident) about his fear of the men having knives or guns. He also admitted that despite his injuries, he did not seek medical attention.

Ramon-Sanchez said he did not see anyone in front of him or the dumpster because he lost his glasses and blood was coming down his face blinding him. Ramon-Sanchez stated he did not intend to strike Guevara, Hernandez, or Riojas with his vehicle; he did not know he was going to hit them; and, in fact, he did not realize he had hit anyone in the parking lot. He admitted he left the parking lot quickly and that he was intoxicated, but he said he was confused, blind, disoriented, everything was “blurry,” and he was lost trying to find his way home. He said he almost crashed into a barricade as he was trying to drive home.

On cross-examination, Ramon-Sanchez was asked if it was a coincidence that he hit the dumpster on the same spot on his car where he also hit the barricade. Ramon-Sanchez said he was not sure, and he did not remember hitting the dumpster, a barricade, or three people. The State pointed out, and Ramon-Sanchez agreed, that an air conditioner and a light pole were between his parked car and the dumpster, and he had to drive between the building and the dumpster. The State then questioned him as follows:

A. I was very confused and disoriented.

Q. So confused and disoriented that you were able to drive around the light pole and around the air conditioner in order to go between the building and the dumpster and hit those three people.

A. I don't remember that.

...

Q. From where you backed up, when you stopped backing up, when you went forward, you did not drive in a straight line, did you?

A. No.

Q. In fact, in order to hit those people, you had to swerve around the light pole and the air conditioner, and then turn back to the left in order to go back into the parking lot, isn't that true?

A. I don't remember that. I just remember just driving forward and see — I didn't see nothing. I [was] just trying to get out of there. You know, I was lost in there right there. I was just — I'm afraid these people were coming with knives and [sic] shoot me or something. But I didn't see no people there. Just driving out of there.

Ramon-Sanchez testified that on the night of the incident there was a large crowd at the Full Moon Saloon, with many people around. He said he was a regular at the Full Moon, and he knew the parking lot “really well.” He conceded there were other exits from the parking lot he could have used, but he was blind, disoriented, and confused. Although he stated he did not know where Hernandez and Riojas went after they hit him while he sat in his car and he did not see anyone in front of or behind his vehicle, he knew the men might still be in the parking lot.

C. Analysis

On appeal, Ramon-Sanchez asserts the above evidence does not support a finding that he acted intentionally, knowingly, or recklessly in driving away after being beaten by two men who hit him repeatedly while he was on the ground, and continued hitting him as he sat in the driver’s seat of his vehicle. Ramon-Sanchez contends he was in fear for his life, wanted to leave, and did not know he had struck anyone when he left the parking lot.

Aggravated assault is a result-oriented offense that can be committed intentionally, knowingly, or recklessly. *See Landrian v. State*, 268 S.W.3d 532, 533, 537 (Tex. Crim. App. 2008). In a result-oriented offense, it is not enough for the State to prove that the defendant engaged in conduct with the requisite criminal intent; the State must also prove the defendant caused the result with the requisite criminal intent. *See Cook v. State*, 884 S.W.2d 485, 490 (Tex. Crim. App. 1994); *Ford v. State*, 38 S.W.3d 836, 844 (Tex. App.—Houston [14th Dist.] 2001, pet. ref’d).

We must examine the entire record to see whether it contains evidence of the requisite intent. *Hart v. State*, 89 S.W.3d 61, 64 (Tex. Crim. App. 2002). A person acts intentionally with respect to a result of his conduct when it is his conscious objective or desire to cause the result. TEX. PENAL CODE § 6.03(a). A person acts knowingly with respect to a result of his conduct when he is aware that it is reasonably certain to cause the result. *Id.* § 6.03(b). Whether one acted

intentionally or knowingly may be inferred from circumstantial evidence, *Wolfe v. State*, 917 S.W.2d 270, 275 (Tex. Crim. App. 1996), such as from the words and conduct of the accused. *Hart*, 89 S.W.3d at 64.

In order for the jury to convict Ramon-Sanchez of reckless conduct, the State needed to present evidence that he was aware of but consciously disregarded a substantial and unjustifiable risk created by his conduct. *See Williams v. State*, 235 S.W.3d 742, 750 (Tex. Crim. App. 2007). Recklessness is distinct from negligence: “Criminal negligence depends upon a morally blameworthy failure to appreciate a substantial and unjustifiable risk while recklessness depends upon a more serious moral blameworthiness—the actual disregard of a known substantial and unjustifiable risk.” *Id.* at 751. “Recklessness requires the defendant to actually foresee the risk involved and to consciously decide to ignore it.” *Id.*

Ramon-Sanchez asserts the evidence establishes, at most, only criminally negligent conduct on his part. However, this argument rests on the jury believing Ramon-Sanchez’s testimony. A defendant’s state of mind is a question of fact that must be determined by the jury. *See Brown v. State*, 122 S.W.3d 794, 800 (Tex. Crim. App. 2003). And, we must defer to the jury’s credibility and weight determinations. *Brooks*, 323 S.W.3d at 899. Here, the jury heard testimony that Ramon-Sanchez drove in the direction of the three complainants although there were other exits from the parking lot he could have used and he was familiar with the parking lot; he struck the complainants from behind shortly after his fight with Riojas and Hernandez and he knew they were probably still in the parking lot; and, before striking the complainants, he struck only a dumpster while avoiding an air conditioner and a light pole. The jury also heard testimony that after striking the complainants, he stopped, backed up, and then drove forward again, resulting in his almost running over Hernandez twice and missing Riojas a second time because Riojas was able to move out of the way.

The jury was free to disregard Ramon-Sanchez's testimony and could have reasonably inferred that Ramon-Sanchez either intentionally, knowingly, or recklessly caused serious bodily injury to Guevara, Riojas, and Hernandez. We therefore hold the evidence is sufficient to support Ramon-Sanchez's conviction.

RESTITUTION

In his second and final issue, Ramon-Sanchez asserts, and the State agrees, that the restitution amount awarded to Guevara should be reduced to \$7,320.00, rather than the \$12,200.00 actually awarded. During the punishment phase, the trial court ordered restitution to Guevara from the General Crime Victim's Compensation Fund in the amount of \$12,267.68, plus an additional twelve weeks of lost wages for Guevara at \$610 per week, which should have totaled \$7,320.00. But when the trial court asked the State for the dollar amount of lost wages, the State responded \$12,200.00, which amounts to twenty weeks. Therefore, the judgment incorrectly reflects a total restitution amount of \$24,467.68. We agree the lost wages amount should be reduced by \$4,880.00, and the judgment modified to reflect a total restitution amount of \$19,587.68.

CONCLUSION

We modify the trial court's judgment on count one to reflect that the total amount of restitution be \$19,587.68, and affirm the judgment on count one as modified. *See* TEX. R. APP. P. 43.2(b) ("The court of appeals may . . . modify the trial court's judgment and affirm it as modified"). The trial court's judgments on counts two and three are affirmed.

Karen Angelini, Justice

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