



Fourth Court of Appeals
San Antonio, Texas

MEMORANDUM OPINION

No. 04-15-00580-CR

Sergio Ibarra **JIMENEZ**,
Appellant

v.

The **STATE** of Texas,
Appellee

From the 379th Judicial District Court, Bexar County, Texas
Trial Court No. 2013CR11598
Honorable Ron Rangel, Judge Presiding

Opinion by: Marialyn Barnard, Justice

Sitting: Karen Angelini, Justice
Marialyn Barnard, Justice
Rebeca C. Martinez, Justice

Delivered and Filed: September 14, 2016

AFFIRMED

A jury convicted appellant Sergio Ibarra Jimenez of aggravated assault with a deadly weapon. The trial court assessed punishment at three years' confinement. In his sole appellate issue, Jimenez contends the evidence is legally insufficient to support his conviction. We affirm the trial court's judgment.

BACKGROUND

According to Bexar County Deputy Sheriff Tracy Molina, she was dispatched to "an assault in progress" at a trailer home in Bexar County. The home was occupied by Jimenez and

his long-time partner, Patricia Castillo. Deputy Molina testified that when she arrived, Jimenez was sitting outside the home; Ms. Castillo and the couple's adult son, Jesus, were inside. According to the deputy, other officers who had arrived at the residence stayed outside with Jimenez while she went inside.

Once inside, the deputy realized Ms. Castillo was primarily a Spanish-speaker. Although Jesus spoke English and provided some translation early on, eventually a deputy arrived who spoke Spanish. After the Spanish-speaking deputy arrived, Deputy Molina testified she received information about the events that prompted the call to 911. When asked about injuries to Ms. Castillo, the deputy stated that although she did not see any significant injuries to Ms. Castillo, she noticed some redness on her body, describing it as, "right here at the collar line, like red lines, and then on the chest, through her whole chest, the top part was red." The redness corroborated the information relayed to the deputy by Ms. Castillo and Jesus. Based on information gathered from Ms. Castillo and Jesus, Deputy Molina arrested Jimenez for assaulting Ms. Castillo. Having learned a knife was involved, the deputy and other officers conducted a limited search in and around the trailer, but no knife was found.

The State also presented testimony from Deputy Molina's field supervisor, Sergeant Chris Burchell. Sergeant Burchell testified he also responded to the dispatch, describing it as a call for "a disturbance with a knife." The sergeant described Ms. Castillo as "scared" and "very hysterical," testifying she was upset and crying — so upset, in fact, that she had trouble speaking. Ultimately, Sergeant Burchell determined an offense had been committed, specifically an aggravated assault with a deadly weapon. He too testified that although they searched in the immediate area for the knife, they were unable to find it.

Ms. Castillo was called as the State's third witness. She began her testimony by admitting she did not want to testify. Ms. Castillo advised the jury she is not married to Jimenez, but on the

date of the assault they were living together. Ms. Castillo admitted she called 911, but testified she called because “he would arrive drunk.” However, she went on to explain that on the day of the assault, she arrived home from work and walked into the bedroom. Suddenly, Jimenez grabbed her from behind, using his arm around her chest to restrain her and placing the knife against her throat. She testified, “I felt a knife on my throat.” Ms. Castillo testified Jimenez was the person holding the knife to her throat. She stated she was afraid for her life, but Jesus came in and pulled Jimenez off of her.

On cross-examination, however, Ms. Castillo testified she was unsure whether Jimenez actually had a knife, stating it could have been a cell phone. She stated no knife was ever found, seeming to imply that meant no knife was held to her throat. Ms. Castillo claimed she was not sure about some of the things she told law enforcement personnel on the day of the assault. She stated she did not want to testify because she does not currently believe it was a knife that Jimenez held to her throat.

The State’s final witness was Deputy Veronica Casanova. Deputy Casanova testified that she, like numerous other deputies, responded to the trailer home based on the dispatch call advising of a “disturbance in progress with a knife.” The deputy explained that with calls like this, “anybody that’s in close proximity to that area is to respond.” When she arrived, Deputy Molina and her training officer asked if she spoke Spanish and could translate for them. Deputy Casanova stated she was fluent in Spanish, having been called upon numerous times in the past to translate at crime scenes.

Deputy Casanova spoke to Ms. Castillo and Jesus. Based on her conversation with them, she told the other deputies at the scene to look for “a steak knife with a black handle.” Deputy Casanova stated Ms. Castillo “seemed shaken up. She was crying.” The deputy said Jesus seemed

very concerned about his mother. Deputy Casanova stated she too participated in the search for the knife, but no knife was found.

After the Deputy Casanova's testimony, the State rested. Jimenez called a single witness, his son Jesus. Jesus testified he was currently twenty-two-years-old, but was twenty-one at the time of the assault. He testified that on the day of the assault, he was asleep, but awoke when he heard "arguing, like screaming." Jesus stated he got up and went to check on his parents. He saw them arguing and Jimenez was on top of his mother. Jesus pushed Jimenez off of his mother. At trial, Jesus denied seeing a knife in his father's hand, anywhere nearby, or in the trailer. He testified he picked Jimenez up and took him outside. At that point, the deputies arrived. Jesus denied seeing his father dispose of any weapon and denied his father was ever out of his sight until deputies arrived.

On cross-examination, Jesus denied any female deputy translated for his mother, claiming he was the one translating his mother's statements for authorities. He admitted, however, telling deputies at the scene that his father was on the bed holding a knife in his right hand as if he was preparing to stab his mother. Jesus admitted his father had been aggressive toward his mother in the past.

After Jesus testified, the defense rested. After hearing closing arguments and the trial court's charge, the jury retired to deliberate. Ultimately, the jury found Jimenez guilty of aggravated assault with a deadly weapon. The trial court sentenced him to three years' confinement. Thereafter, Jimenez perfected this appeal.

ANALYSIS

As noted above, Jimenez raises a single issue on appeal. On appeal, he contends the evidence is legally insufficient for two reasons. First, he points out there are significant discrepancies between Ms. Castillo's trial testimony and what she allegedly told deputies at the

time of the assault. Jimenez contends Ms. Castillo's trial testimony "is more believable" than "spontaneous" statements made to law enforcement at the time of the events in question. Second, he notes Jesus specifically testified at trial that he never saw Jimenez with a knife, arguing his contrary statement to deputies at the time of the assault "was not accurate."

Standard of Review

We review legal sufficiency challenges under the standard announced by the United States Supreme Court in *Jackson v. Virginia*. *Brooks v. State*, 323 S.W.3d 893, 895 (Tex. Crim. App. 2010) (citing *Jackson v. Virginia*, 443 U.S. 307, 319 (1979)); *Mayberry v. State*, 351 S.W.3d 507, 509 (Tex. App.—San Antonio 2001, pet. ref'd). Under this standard, we must determine, "after viewing the evidence in the light most favorable to the verdict, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *Mayberry*, 351 S.W.3d at 509; *see Jackson*, 443 U.S. at 319.

In applying this standard, we must show deference to the jury's assessment of credibility, weighing of the evidence, and resolution of conflicts in the testimony. *Brooks*, 323 S.W.3d at 899. And, we must keep in mind we cannot substitute our judgment for that of the jury, nor may we reweigh the evidence. *Orellana v. State*, 381 S.W.3d 645, 653 (Tex. App.—San Antonio 2012, pet. ref'd) (citing *King v. State*, 29 S.W.3d 556, 562 (Tex. Crim. App. 2000)). Furthermore, the jury may reject or accept some, all, or none of a witness's testimony. *Lancon v. State*, 253 S.W.3d 699, 707 (Tex. Crim. App. 2008); *Orellana*, 381 S.W.3d at 653. Any inconsistencies in the evidence must be resolved in favor of the verdict. *Gonzales v. State*, 330 S.W.3d 691, 694 (Tex. App.—San Antonio 2010, no pet.) (citing *Curry v. State*, 30 S.W.3d 394, 406 (Tex. Crim. App. 2000)). Thus, when the evidence is conflicting, we must presume the jury resolved the conflicts in favor of the verdict and must defer to that determination. *See Jackson*, 443 U.S. at 319; *Clayton v. State*, 235 S.W.3d 772, 778 (Tex. Crim. App. 2007).

Application

A person commits the offense of aggravated assault with a deadly weapon if he intentionally or knowingly threatens another with imminent bodily injury and uses or exhibits a deadly weapon during the commission of the assault. TEX. PENAL CODE ANN. § 22.02(a)(2) (West 2011); *see id.* § 22.01(a)(2) (West Supp. 2015). A deadly weapon is anything that in the manner of its use or intended use is capable of causing death or serious bodily injury. TEX. PENAL CODE ANN. § 1.07(a)(17)(B) (West Supp. 2015). Thus, the State had to prove Jimenez intentionally or knowingly threatened Ms. Castillo with bodily injury and exhibited a deadly weapon during the assault. *See* TEX. PENAL CODE ANN. § 22.02(a)(2).

Although the eyewitnesses — Ms. Castillo and Jesus — provided conflicting versions of the events in question, the evidence shows both eyewitnesses told deputies on the day of the assault that Jimenez threatened Ms. Castillo with a knife. Ms. Castillo told deputies Jimenez held a knife to her throat and admitted at trial that she told deputies this. Ms. Castillo also told deputies she was afraid for her life, and two deputies testified she was hysterical or scared. Deputy Molina testified she saw indications on Ms. Castillo's body that supported Ms. Castillo's claim that Jimenez grabbed her and forcibly held her. Similarly, the evidence shows Jesus told deputies his father was holding a knife and it appeared as if he was going to stab Ms. Castillo. He also admitted at trial that he told deputies about his father's threatening actions with the knife.

Jimenez suggests their trial testimony, wherein they each testified there was no knife, was more credible. However, the applicable standard of review precludes this court from making judgments as to credibility — that is the domain of the jury. *See Brooks*, 323 S.W.3d at 899. Here, jurors heard the account of events as relayed to deputies at the time of the assault and the contrary trial testimony. It was up to the jury to accept some, all, or none of that testimony, and we must presume the jurors resolved the conflicts in the evidence in favor of the verdict. *See Orellana*, 381

S.W.3d at 635; *Gonzales*, 330 S.W.3d at 694. Thus, jurors could have believed that the statements provided by Ms. Castillo and Jesus to deputies on the day of the assault were true, and disregarded their trial testimony contradicting those statements. *See Orellana*, 381 S.W.3d at 635; *Gonzales*, 330 S.W.3d at 694. Presuming, as we must, that the jury resolved the conflicts in favor of the guilty verdict, and deferring to that determination, we hold the evidence was legally sufficient for the jury to find Jimenez guilty of the charged offense. *See Jackson*, 443 U.S. at 319; *Clayton*, 235 S.W.3d at 778. We therefore overruled Jimenez's sole issue.

CONCLUSION

Based on the foregoing, we hold there was legally sufficient evidence for the jury to conclude Jimenez committed the offense of aggravated assault with a deadly weapon. Accordingly, we affirm the trial court's judgment.

Marialyn Barnard, Justice

Do Not Publish