



Fourth Court of Appeals
San Antonio, Texas

MEMORANDUM OPINION

No. 04-16-00290-CR

Christopher **JUSTICE**,
Appellant

v.

The **STATE** of Texas,
Appellee

From the 227th Judicial District Court, Bexar County, Texas
Trial Court No. 2014CR3809
Honorable Kevin M. O'Connell, Judge Presiding

Opinion by: Sandee Bryan Marion, Chief Justice

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

Delivered and Filed: September 13, 2017

AFFIRMED

A jury found appellant, Christopher Justice, guilty of assault against a family member, and assessed punishment at four years' confinement. In a single issue on appeal, appellant asserts the evidence is legally insufficient to support the jury's finding that he caused bodily injury to the complainant by striking her with his hand because the complainant's testimony about the events on the day of the assault is "plagued by far too many inconsistencies to ever qualify as evidence" and her testimony was, at times, contradicted by the testimony from her son. We affirm.

BACKGROUND

The complainant (“Twyla”) was married to appellant on December 24, 2013, the date of the assault.¹ Twyla testified that on December 24, she, appellant, and their two sons were all at home. She told appellant she did not feel well, and went to one of the bedrooms to lie down. Twyla said that around noon, she asked her twelve-year-old son, T.L., to make lunch for himself and his younger brother.² According to Twyla, appellant came into the bedroom after lunch, and tried to pressure her into having oral sex with him. She told him no, and she went into the kitchen. She said appellant followed her into the kitchen and tried to grab her. She told him to leave her alone, but he continued to grab and squeeze her. She went into the living room and sat on the couch, where he grabbed at her again and she slipped onto the floor. She said appellant grabbed her first by her arms and then by her legs, and dragged her to the bedroom. Twyla said she heard her knee “pop.”

Twyla said that as they struggled in the bedroom appellant held his arms around her, and her glasses fell to the floor. She thought she might have hit or head-butted appellant because she was moving her arms around while trying to get away. When T.L. came into the bedroom, Twyla told appellant “to quit” and she asked T.L. to pick up her glasses. After appellant left the bedroom, Twyla and her son found her glasses and a small screw that had come out of the frame. Twyla told her son to go into the kitchen to get a knife to put the screw back into the frame. When T.L. brought a butter knife that was too thick, she asked him to retrieve a thinner steak knife.

As Twyla sat on the bed trying to put the screw back into her glasses using the steak knife, appellant came back into the bedroom and “started grabbing on [her] and messing with [her]

¹ Twyla filed for divorce on December 30, 2013, and the divorce was granted on August 8, 2014.

² T.L. was Twyla’s son from a previous relationship. Appellant and Twyla also had a son together, and this child turned one year old on December 18, 2013.

again.” She said that as she rolled to the other side of the bed, appellant grabbed her legs and pulled her back toward him. At this point, she turned the blade-side of the knife toward her, swung the blade at appellant, and then dropped the knife on the bed. Appellant hit her in the face with his open hand. Twyla then hit appellant. She said while she and appellant were hitting each other, T.L. yelled at them to stop, and appellant hit her again and pulled her arms behind her. At this time, T.L. started to hit appellant, telling him to release his mother. Appellant “slam[med]” T.L. into a dresser. After appellant released Twyla, she, T.L., and her other son went into T.L.’s bedroom where she called the police. When the police arrived, they found appellant “sitting down on the bed watching TV like nothing happened.”

Twyla told the two police officers who responded to the call that she wanted appellant arrested. According to Twyla, one of the officers said that because she went after appellant with the knife she could be arrested for aggravated assault with a deadly weapon. Appellant said he did not want to press charges, and Twyla said she decided not to make a complaint about appellant because her sons were afraid they would be left alone with appellant if she were arrested. The police left after telling appellant to stay in his bedroom and Twyla and the boys to stay in her son’s bedroom. At around 3:00 a.m. the next morning, appellant told Twyla to come out of their sons’ room and into the master bedroom. Appellant again grabbed at her and she screamed until T.L. came out of his room. Twyla again called the police, who arrived, spoke to appellant, and then left. Twyla packed up her sons’ belongings, got in the car, and drove to a friend’s house. While showering at her friend’s house the next day, Twyla saw the bruises on her body and her left knee had begun to hurt. She called the police on December 26.

When she told a police officer what happened and showed him her bruises, he did not take photographs, but told her she could take photos with her own phone. He gave her a card and told her to call a detective to file a report. On January 8, 2014, Twyla called the detective, made a

written report, and photographs of her injuries were taken. The jury saw the photographs, which showed bruises to her arms, knee, and legs. Although no photograph was taken of her face, Twyla said it was red and swollen where appellant hit her.

On cross-examination, defense counsel asked Twyla about the first police report that indicated there were no injuries. Twyla denied telling the officers she was not hurt. She said she told the officers she and appellant argued and she had hurt her knee. When asked about the second police report that also stated no injuries, Twyla said one of the officers saw her swollen face. Twyla again stated she asked T.L. to get the knife, and she denied telling the police officer she was the one who got the knife. She clarified that the only time she “got the knife” was when she grabbed for it because she dropped it as appellant was dragging her. Twyla said appellant slapped her on the left side of her face, but in her written statement, she said he hit her on the right side. Twyla agreed she also did not mention in her written statement that her knee popped.

On re-direct, Twyla stated that when the police responded to her first call, she told the officer appellant had hit and grabbed her. She also stated she told the police officers, each time she spoke to an officer, about the knife. Twyla conceded there was a discrepancy as to which side of her face was hit, but she said she did not intentionally misstate what happened. She said her statement in her written report about being hit on the right side of her face was accurate. She agreed the report, written after the assault, was more accurate than her testimony now two years later. She said she did not mention her knee in the written report because the detective told her to write only the “gist” of what happened.

T.L. also testified at trial. He said appellant was drunk on the day of the assault. T.L. said appellant was trying to “hug” his mother and would not release her when she asked him to do so. He said he saw his mother and appellant punching each other, but he did not know who struck the first blow. At some point, while the couple was struggling on the floor, T.L. hit appellant twice

on his head. Appellant released Twyla and he went to the living room to watch television. T.L. said his mother asked him to get a knife to help fix her glasses. When asked what happened after he gave the knife to his mother, he said appellant and his mother “were like daggering each other with it, like messing with it.” He forgot who actually held the knife. T.L. said appellant pushed him, causing his head and shoulder to hit the wall. According to T.L., appellant hit his mother with both his fist and open hand on her face, arm, and leg. He saw bruises on her arms and legs about one day later. T.L. also said his mother told him to call the police, appellant told him not to call, but T.L. said he called the police.

On cross-examination, T.L. said that earlier in the day, his mother turned off the television appellant was watching because appellant was drunk and she wanted him to leave. When appellant got up and walked to the bedroom, T.L. stood in front of the door to block him, which is when appellant pushed T.L. out of the way. Appellant walked into the bedroom, followed by Twyla. Appellant told Twyla to leave him alone. T.L. went back into the kitchen to feed his brother, but he returned to the bedroom because he “heard punches.” T.L. saw appellant and Twyla hitting each other, but he did not see who hit first. T.L. remembered his mother held the knife and told appellant to “back away.” When asked if appellant ever hit his mother while they were in the living room or whether appellant dragged her, T.L. said “no” and “I don’t know.”

Bexar County Sheriff Deputy Rames Alcala testified he met with Twyla on December 26, 2013 when she called him after the assault and he initiated the offense report. At the time, he saw bruises “all through her arms and legs,” and he believed the bruising was consistent with what Twyla said happened. Deputy Alcala said he prepared the offense report and forwarded it to a family violence investigator. Sergeant Angela Freveletti, the investigator assigned the case, testified she interviewed Twyla and had Twyla complete a written statement. Sergeant Freveletti also photographed the “numerous” bruises on Twyla’s forearms, calves, and legs. She also

believed the bruising was consistent with what Twyla said happened. Sergeant Freveletti did not speak to either appellant or T.L. Sergeant Freveletti said the only inconsistency she could recall was that Twyla told her appellant handed her the knife, but she also said her son handed her the knife. However, Sergeant Freveletti admitted she was not “a hundred percent certain” about what Twyla told her regarding the knife. She characterized any inconsistencies as “minor.”

Finally, the trial court admitted into evidence a judgment showing appellant was convicted of family violence assault against another woman in November 2004.

ANALYSIS

When we review the sufficiency of the evidence, we view the evidence “in the light most favorable to the verdict and determine whether, based on the evidence and reasonable inferences therefrom, a rational juror could have found the essential elements of the crime beyond a reasonable doubt.” *Anderson v. State*, 416 S.W.3d 884, 888 (Tex. Crim. App. 2013) (citing *Jackson v. Virginia*, 443 U.S. 307, 318-19 (1979)). The jury is the sole judge of the credibility of witnesses and the weight to be given to their testimony, and we must not usurp this role by substituting our own judgment for that of the jury. *Montgomery v. State*, 369 S.W.3d 188, 192 (Tex. Crim. App. 2012). Our duty as the reviewing court is simply to ensure the evidence presented supports the jury’s verdict and the State has presented a legally sufficient case of the offense charged. *Id.* When the record supports conflicting inferences, we presume the jury resolved the conflicts in favor of the verdict, and we defer to that determination. *Merritt v. State*, 368 S.W.3d 516, 525-26 (Tex. Crim. App. 2012).

The elements of assault on a family member, as relevant here, are (1) intentionally, knowingly, or recklessly (2) causing bodily injury (3) to another person (4) who is a member of the defendant’s family or a person with whom the defendant has a “dating relationship.” TEX. PENAL CODE ANN. § 22.01(a) (West Supp. 2016) (defining assault). Under the Penal Code, the

offense is enhanced from a Class A misdemeanor to a third-degree felony if the assault is against a family member or involves “dating violence” and the defendant has certain prior convictions, including a prior conviction for assault on a family member.³ *Id.* § 22.01(b)(2)(A); TEX. FAM. CODE ANN. § 71.0021 (West Supp. 2016) (defining “dating violence” and “dating relationship”); *id.* § 71.003 (West 2014) (defining “family”).

Here, the evidence favorable to the verdict indicated appellant struck Twyla and dragged her with enough force to cause bruising. Both Deputy Alcalá and Sergeant Freveletti believed the bruising was consistent with Twyla’s account of the assault. The testimony of the only eyewitness—T.L.—was also before the jury and was generally consistent with his mother’s account. Although there may have been inconsistencies in the evidence, the jury’s task was to resolve these inconsistencies. Based on our review of the evidence and reasonable inferences therefrom, we conclude a rational juror could have found the essential elements of the crime beyond a reasonable doubt.

CONCLUSION

We overrule appellant’s issue on appeal and affirm the trial court’s judgment.

Sandee Bryan Marion, Chief Justice

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³ The jury charge tracked the statutory language, and appellant had a prior conviction for assault on a family member.