



Fourth Court of Appeals
San Antonio, Texas

MEMORANDUM OPINION

No. 04-17-00131-CR

Mithak Hatem Shukur **NISSANIE**,
Appellant

v.

The **STATE** of Texas,
Appellee

From the County Court at Law No.7, Bexar County, Texas
Trial Court No. 518930
Honorable Genie Wright, Judge Presiding

Opinion by: Irene Rios, Justice

Sitting: Marialyn P. Barnard, Justice
Rebeca C. Martinez, Justice
Irene Rios, Justice

Delivered and Filed: October 11, 2017

AFFIRMED

A jury found Mithak Hatem Shukur Nissanie guilty of the offense of assault resulting in bodily injury. The trial court assessed punishment at confinement for one year in county jail, probated for two years, and a \$1,000 fine, also probated. In a single issue on appeal, Nissanie contends the evidence is insufficient to support his conviction. We affirm the judgment of the trial court.

BACKGROUND

On May 28, 2016, San Antonio Police Department (SAPD) Officer Eric Alvarez arrived at Nissanie's residence after a neighbor called 911 to report an assault. Nissanie's wife, Elaf Alshaikhlie ("Complainant"), greeted Officer Alvarez at the door. According to Officer Alvarez, Complainant appeared distraught and scared and as though she had been crying. Although Complainant spoke little English, she was able to communicate with Officer Alvarez by hand gestures and her limited English. According to Officer Alvarez, Complainant indicated that she had a bump on the side of her head as a result of Nissanie hitting her in the head with a shoe. Officer Alvarez testified that when he inspected the bump on Complainant's head, Complainant flinched as if in pain. When questioned by Officer Alvarez, Nissanie denied any physical violence occurred or that he caused his wife's head injury. Nissanie was subsequently charged by information with the offense of assault with bodily injury.

Complainant testified during Nissanie's trial as a witness for the State. However, when questioned about the incident, Complainant invoked the Fifth Amendment and refused to testify. When specifically asked by the State whether Nissanie hit her with a shoe, Complainant again refused to testify and requested the prosecutor change the question. Complainant testified that she was angry that day because she and Complainant argued. Complainant additionally testified that her friend called the police after Complainant reached out to the friend for help. Although Complainant acknowledged that Officer Alvarez touched a "dimple" on her head and took pictures of it, she refused to answer questions about how she received the injury. On cross-examination, Complainant testified that Nissanie never hit her with a shoe. The jury found Nissanie guilty of the offense of assault with bodily injury.

This appeal followed.

STANDARD OF REVIEW

When examining the sufficiency of the evidence, we consider all the evidence in the light most favorable to the conviction to determine whether, based on the evidence and reasonable inferences therefrom, 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, 318–19 (1979); *Merritt v. State*, 368 S.W.3d 516, 525 (Tex. Crim. App. 2012). “[C]ircumstantial evidence is as probative as direct evidence in establishing the [defendant’s] guilt ... and circumstantial evidence alone may be sufficient to establish guilt.” *Carrizales v. State*, 414 S.W.3d 737, 742 (Tex. Crim. App. 2013).

As the factfinder, the jury is the exclusive judge of witness credibility and the weight of the evidence. *Tate v. State*, 500 S.W.3d 410, 413 (Tex. Crim. App. 2016). The jury is permitted to draw reasonable inferences from the facts so long as the inferences are supported by the evidence. *Id.* Our role is not to act as a thirteenth juror, and “we may not re-evaluate the weight and credibility of the record evidence and thereby substitute our judgment for that of the fact finder.” *Isassi v. State*, 330 S.W.3d 633, 638 (Tex. Crim. App. 2010) (quoting *Dewberry v. State*, 4 S.W.3d 735, 740 (Tex. Crim. App. 1999)). Our duty is “not to reweigh the evidence from reading a cold record.” *Matamoros v. State*, 901 S.W.2d 470, 474 (Tex. Crim. App. 1995). Rather, we act as a “final, due process safeguard,” ensuring that the jury acted rationally in rendering its verdict. *Id.* (quoting *Moreno v. State*, 755 S.W.2d 866, 867 (Tex. Crim. App. 1988)).

Further, the reconciliation of conflicts in the evidence is within the factfinder’s exclusive province. *Wyatt v. State*, 23 S.W.3d 18, 30 (Tex. Crim. App. 2000). If a record supports conflicting inferences, we presume the factfinder resolved the conflicts in favor of the prevailing party and therefore defer to that determination. *Jackson*, 443 U.S. at 326; *Tate*, 500 S.W.3d at 413.

ANALYSIS

Nissanie contends the State's evidence was legally insufficient to allow a rational jury to convict him of assault. Nissanie argues Complainant's refusal to testify at trial about the incident, combined with Officer Alvarez's testimony relating his communication with Complainant, constitutes such meager evidence that no rational juror could have found Nissanie guilty of assault.

To sustain a conviction for assault causing bodily injury, the evidence must show that the defendant "intentionally, knowingly, or recklessly cause[d] bodily injury to another, including the person's spouse." *See* TEX. PENAL CODE ANN. § 22.01(a)(1) (West Supp. 2015). Bodily injury is defined as encompassing physical pain, illness, or any impairment of physical condition. *Id.* § 1.07(a)(8) (West Supp. 2016).

In this case, the record shows the police arrived at Complainant's home after she contacted a friend asking for help, who then called 911. Upon his arrival, Officer Alvarez found Complainant upset and crying. Complainant then communicated to the officer through limited English and hand gestures that Nissanie hit her in the head with a shoe during the course of an argument. Both Complainant and Officer Alvarez testified that he inspected and touched a bump on her head, although Complainant described it as a "dimple." Officer Alvarez noted Complainant flinched in pain when he touched the bump. The State additionally introduced into evidence photographs taken at the scene, which depict Complainant lifting her hair to show an injury on the side of her head just above her ear. Although the witnesses presented conflicting evidence in this case, we defer to the jury's evaluation of that evidence. *Tate*, 500 S.W.3d at 413; *see also Sharp v. State*, 707 S.W.2d 611, 614 (Tex. Crim. App. 1986) (noting that a jury may choose to believe or disbelieve any portion of the witnesses' testimony). The jury's guilty verdict indicates the jury resolved the conflicting evidence presented in favor of the State and rejected Complainant's account of events. *See Bargas v. State*, 252 S.W.3d 876, 888–89 (Tex. App.—Houston [14th Dist.]

2008, no pet.) (holding that where the witnesses presented conflicting testimony, “any inconsistencies in the testimony should be resolved in favor of the jury’s verdict”).

The record reflects the State presented evidence on each element of the offense. After considering all the evidence in the light most favorable to the conviction, we conclude a rational jury could have found beyond a reasonable doubt that Nissanie intentionally, knowingly, or recklessly caused bodily injury to Complainant. Accordingly, we overrule Nissanie’s sole issue on appeal.

CONCLUSION

The judgment of the trial court is affirmed.

Irene Rios, Justice

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