Fourth Court of Appeals
San Antonio, Texas

MEMORANDUM OPINION

No. 04-19-00252-CR

Robert Deshawn **HUNTER**,
Appellant

v.

The **STATE** of Texas,
Appellee

From the 399th Judicial District Court, Bexar County, Texas
Trial Court No. 2018-CR-4011
Honorable Laura Parker, Judge Presiding

Opinion by: Irene Rios, Justice

Sitting: Sandee Bryan Marion, Chief Justice
Rebeca C. Martinez, Justice
Irene Rios, Justice

Delivered and Filed: July 29, 2020

AFFIRMED

Appellant Robert Hunter appeals his conviction for the offense of robbery. In a single issue, Hunter challenges the sufficiency of the evidence supporting his conviction. We affirm.

BACKGROUND

On January 23, 2018, Leticia Cantu ("Zamora")[1] worked as an asset protection team leader for a Target store in San Antonio. Via surveillance camera, Zamora watched Hunter make a quick concealed selection in the electronics department. Zamora explained Hunter removed an item,

[1] At the time of the offense, Ms. Cantu's surname was Zamora. We will refer to her by that name in this opinion.

later identified as a set of headphones, from a lock and peg hook, which is a security device that normally requires a key. Zamora continued to observe Hunter as he "[l]eft that area concealed in the baby area." As Hunter approached the store's entrance vestibule, Zamora left her office and stopped Hunter before he left the store. Zamora locked one of her arms with one of Hunter's arms and told him that he was being apprehended for theft. Santiago Hyslop, another loss prevention officer, locked his arm with Hunter's other arm.

Hunter became combative when Zamora took out her handcuffs. Hyslop lost hold of Hunter. Hunter turned, swinging Zamora with him. Hunter then struck Zamora with his fist. Zamora released Hunter, and Hunter backed toward the sliding doors leading out of the store. Hunter dropped the headphones, picked them back up, and then pointed his hand at Zamora and Hyslop "like in the shape of a gun" and told them, "I'm going to come back and shoot you." Hunter ran from the store with the headphones and was apprehended by Bexar County Sheriff's Deputies Jonathan Garcia and Eddie Pena a short time later.

Hunter waived a jury trial. The trial court found Hunter guilty of the offense of robbery and assessed punishment at ten years' imprisonment.

Sufficiency of the Evidence

Hunter challenges the sufficiency of the evidence supporting his conviction. Specifically, Hunter argues the evidence is insufficient to support the trial court's finding that Hunter assaulted Zamora or threatened or placed Zamora in fear of imminent bodily injury or death.

Standard of Review

When reviewing the sufficiency of the evidence, we consider the evidence in the light most favorable to the verdict and determine whether "any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *Nisbett v. State*, 552 S.W.3d 244, 262 (Tex. Crim. App. 2018) (emphasis omitted). Under this standard, we defer to the factfinder's

resolution of conflicts in testimony, weighing of the evidence, and drawing of reasonable inferences from basic facts to ultimate facts. *Isassi v. State*, 330 S.W.3d 633, 638 (Tex. Crim. App. 2010). "Furthermore, the trier of fact may use common sense and apply common knowledge, observation, and experience gained in ordinary affairs when drawing inferences from the evidence." *Acosta v. State*, 429 S.W.3d 621, 625 (Tex. Crim. App. 2014).

Applicable Law

1. Robbery

A person commits robbery "if, in the course of committing theft ... and with intent to obtain or maintain control of the property, he: (1) intentionally, knowingly, or recklessly causes bodily injury to another; or (2) intentionally or knowingly threatens or places another in fear of imminent bodily injury or death." TEX. PENAL CODE ANN. § 29.02(a). A person commits theft "if he unlawfully appropriates property with intent to deprive the owner of property." *Id*. § 31.03(a). "'In the course of committing theft' means conduct that occurs in an attempt to commit, during the commission, or in immediate flight after the attempt or commission of theft." *Id*. § 29.01(1).

2. Bodily Injury, Threatens, and Imminent

"'Bodily injury' means physical pain, illness, or any impairment of physical condition." TEX. PENAL CODE ANN. § 1.07(a)(8). "Threatens" is not defined in the Penal Code, but the Court of Criminal Appeals has recognized the plain language of section 22.01(a)(2), and past jurisprudence indicates threat requires proof that, by his conduct, a defendant intended to cause an apprehension of imminent bodily injury. *See Teeter v. State*, PD-1169-09, 2010 WL 3702360, at *6 (Tex. Crim. App. Sept. 22, 2010) (not designated for publication). "Imminent" is also not defined in the Penal Code, but the Court of Criminal Appeals has defined the term to mean "ready to take place, near at hand, hanging threateningly over one's head, menacingly near." *Garcia v. State*, 367 S.W.3d 683, 689 (Tex. Crim. App. 2012) (internal citations omitted).

3. Alternative Means

When a statute provides that an offense may be committed by alternative means, the State may charge those alternatives in the same indictment. *Kitchens v. State*, 823 S.W.2d 256, 258 (Tex. Crim. App. 1991); *Robinson v. State*, 596 S.W.2d 130, 133–34 (Tex. Crim. App. 1980). Moreover, while the means may be alleged in the conjunctive, those means may be considered in the disjunctive, and a conviction on any mean alleged will be upheld if it is supported by the evidence. *Kitchens*, 823 S.W.2d at 258 (noting that in a trial to a jury, it is proper for a jury to be charged in the disjunctive); *Aguirre v. State*, 732 S.W.2d 320, 326 (Tex. Crim. App. [Panel Op.] 1982) (op. on reh'g); *see also Vasquez v. State*, 665 S.W.2d 484, 486–87 (Tex. Crim. App. 1984) ("If there is sufficient evidence to prove one of the two ways of committing the offense, this Court need not consider whether the evidence is also sufficient to prove the alternative theory.").

4. The Indictment

Count I, Paragraph A of the indictment alleged that Hunter, while in the course of committing theft of property and with the intent to obtain and maintain control over the property, intentionally, knowingly, and recklessly caused bodily injury to Zamora by striking Zamora with his hand. Count I, Paragraph B of the indictment alleged that Hunter, while in the course of committing theft of property and with the intent to obtain and maintain control over the property, intentionally and knowingly threatened Zamora and placed her in fear of imminent bodily injury and death.

DISCUSSION

Zamora and Hyslop both testified during Hunter's trial.[2] Each testified Hunter took a set of headphones from a peg in the electronics department and attempted to leave the store. Zamora

[2] The State also introduced the store's surveillance video at trial.

and Hyslop attempted to intercept and apprehend Hunter before he left the store but Hunter became combative. Hyslop and Zamora both testified that during the ensuing altercation, Hunter punched Zamora with his fist. Hunter then left the store without paying for the headphones.

Zamora testified that she experienced pain from being struck in her upper arm and shoulder area. Immediately following the incident, Zamora required ice for her wrist, which became swollen. As a result of the injury, Zamora was not able to lift her shoulder past a certain point. Additionally, Zamora underwent two months of physical therapy for her injury.

Viewing the evidence in the light most favorable to the verdict, we conclude a rational factfinder could have found the essential elements of robbery under Section 29.02(a)(1), which correlates to Count I, Paragraph A of the indictment. *See* TEX. PENAL CODE ANN. § 29.02(a)(1). Therefore, we conclude the evidence in this case is sufficient to sustain Hunter's conviction for robbery by "intentionally, knowingly, or recklessly caus[ing] bodily injury to another."

As we have already found the evidence sufficient to support a conviction under Section 29.02(a)(1) robbery, we will not review the sufficiency of the evidence to show a Section 29.02(a)(2) robbery. *See Aguirre*, 732 S.W.2d at 326.

Issue one is overruled.

CONCLUSION

For the above reasons, we affirm the judgment of the trial court.

Irene Rios, Justice

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