Fourth Court of Appeals
San Antonio, Texas

MEMORANDUM OPINION

No. 04-19-00828-CR

Matthew **WEAKLEY**,
Appellant

v.

The **STATE** of Texas,
Appellee

From the 399th Judicial District Court, Bexar County, Texas
Trial Court No. 2019-CR-4804
Honorable Frank J. Castro, Judge Presiding

Opinion by: Sandee Bryan Marion, Chief Justice

Sitting: Sandee Bryan Marion, Chief Justice
Patricia O. Alvarez, Justice
Liza A. Rodriguez, Justice

Delivered and Filed: June 10, 2020

AFFIRMED

After a jury found appellant Matthew Weakley ("Weakley") guilty of robbery by threat, Weakley pleaded true to two prior convictions alleged for enhancement and the trial court sentenced him to confinement for twenty-five years. We affirm the trial court's judgment.

Background

On February 2, 2019, Weakley entered an Academy Sports and Outdoors store in San Antonio carrying an orange shoebox. Store employee Joseph Ybarra saw Weakley enter the store with the shoebox and go directly to the shoe department. Ybarra recognized Weakley from an incident two or three weeks prior when Weakley was suspected of shoplifting by bringing a

shoebox into the store and filling it with new shoes. Ybarra radioed the manager on duty, Matt Beadleston, and told him: "[T]hat guy that's standing over there, it was about two to three weeks ago that you kicked out for attempting to steal shoes, he's back and he's in footwear again."

Beadleston approached Weakley in the shoe department, where he was pushing a shopping cart containing at least one shoebox and several items of store merchandise, including a baseball bat. Recognizing Weakley from the prior incident, Beadleston told Weakley the store "chose not to do business with him anymore" and asked him to leave. When Weakley tried to push past Beadleston with the shopping cart, Beadleston put his hand on the cart to stop him. Weakley responded by reaching into the shopping cart and removing the baseball bat. Weakley held the bat "halfway up," "about six inches, eight inches away from [Beadleston's] head," and leaned in toward Beadleston, telling him: "Don't you fucking tell me what to do." Beadleston testified he felt "very intimidate[ed]" and "absolutely" threatened by Weakley. As Weakley pushed his shopping cart toward the store entrance, Beadleston, who was "still shaken up" and "a little nervous," called 9-1-1.

When Weakley reached the front of the store, Ybarra approached him and told him: "Come on, Bro, like you don't have to do this again. . . . I know you traded out your shoes. You've been in here two to three weeks ago. . . . [J]ust walk out, don't worry about anything." Weakley responded: "Get the heck out of my way," then "jerked [the baseball bat] like he was going to swing at [Ybarra]." Ybarra testified: "I was like, I'm not going to get hit for this, so I kind of just stepped out to the side because I thought he was going to hit me." Weakley left the store with the baseball bat and the orange shoebox he entered with.

San Antonio Police Detective Jim Acuna was assigned to investigate the incident. After both Beadleston and Ybarra identified Weakley in a photographic lineup, Detective Acuna obtained a warrant for Weakley's arrest. At trial, the jury heard testimony from Beadleston, Ybarra,

Detective Acuna, and the detective who oversaw the photographic lineup. The trial court admitted and played for the jury the store security video of the incident and the audio recording of Beadleston's 9-1-1 call. The jury found Weakley guilty of threatening Beadleston in the course of committing a robbery.

Standard of Review

In a single issue on appeal, Weakley argues the evidence is legally insufficient to support the guilty verdict. When considering a legal sufficiency challenge, we review all the evidence in the light most favorable to the verdict to determine whether any rational factfinder could have found the essential elements of the crime beyond a reasonable doubt. *Mayberry v. State*, 351 S.W.3d 507, 509 (Tex. App.—San Antonio 2011, pet. ref'd) (citing *Jackson v. Virginia*, 443 U.S. 307, 319 (1979)). We defer to the factfinder's responsibility "'to resolve conflicts in the testimony, to weigh the evidence, and to draw reasonable inferences from basic facts to ultimate facts.'" *Id.* (quoting *Jackson*, 443 U.S. at 319). Whether the evidence is legally sufficient is a question of law, and we will not overturn the verdict unless it is irrational or unsupported by proof beyond a reasonable doubt. *See Matson v. State*, 819 S.W.2d 839, 846 (Tex. Crim. App. 1991).

We apply this standard of review to a hypothetically correct jury charge. *Adames v. State*, 353 S.W.3d 854, 861 (Tex. Crim. App. 2011), *cert. denied*, 565 U.S. 1262 (2012). The crime at issue here is robbery by threat. An individual commits a robbery by threat if, "in the course of committing a theft . . . and with intent to obtain or maintain control of the property, he . . . intentionally or knowingly threatens or places another in fear of imminent bodily injury or death." TEX. PENAL CODE ANN. § 29.02(a)(2). A person commits theft "if he unlawfully appropriates property with intent to deprive the owner of property." *Id.* § 31.03(a).

Discussion

The jury found Weakley committed robbery by threat by, in the course of committing a theft, intentionally or knowingly threatening or placing Beadleston in fear of imminent bodily injury or death. Weakley argues the evidence is legally insufficient to support the verdict because Weakley "did not raise his bat up in a threatening manner," but rather "simply held it up halfway and told Beadleston to get out of his way so he could leave."

"By defining robbery to be theft plus *either* threatening or placing another in fear, [the robbery] statute demonstrates that the term 'threaten' means something other than placing a person 'in fear of imminent bodily injury or death.'" *Olivas v. State*, 203 S.W.3d 341, 345–46 (Tex. Crim. App. 2006) (emphasis in original). Accordingly, a victim of robbery by threat may be either threatened *or* placed in fear of imminent harm. *Boston v. State*, 373 S.W.3d 832, 840 (Tex. App.—Austin 2012) (holding evidence sufficient where victim of robbery was threatened "whether or not she was placed in fear of imminent harm"), *aff'd*, 410 S.W.3d 321 (Tex. Crim. App. 2013); *Howard v. State*, 306 S.W.3d 407, 410 (Tex. App.—Texarkana 2010) ("Under the 'placed in fear' language of Section 29.02, the fact-finder may conclude that an individual was 'placed in fear' in circumstances where no actual threats are conveyed."), *aff'd*, 333 S.W.3d 137 (Tex. Crim. App. 2011).

Here, the record clearly demonstrates that regardless of whether Weakley actually threatened Beadleston, his conduct placed Beadleston in fear of imminent bodily injury or death. Beadleston testified he felt "very intimidate[ed]" and "absolutely" threatened by Weakley's conduct, so much so that he was "still shaken up" and "a little nervous" while making the 9-1-1 call heard by the jury. When asked whether he feared for his life, Beadleston testified: "I was in fear of something escalating, yes, sir. . . . I was in fear of being harmed, yes." Therefore, viewing the evidence in the light most favorable to the verdict, we conclude a rational factfinder could have

found the essential elements of robbery by threat beyond a reasonable doubt. *See Mayberry*, 351 S.W.3d at 509. Weakley's sole issue is overruled.

Conclusion

Having overruled Weakley's sole issue, we affirm the trial court's judgment.

Sandee Bryan Marion, Chief Justice

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