

In The
Court of Appeals
Ninth District of Texas at Beaumont

NO. 09-14-00224-CR

JAMES LEE BOTLEY, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the Criminal District Court
Jefferson County, Texas
Trial Cause No. 12-15666

MEMORANDUM OPINION

Arguing that the evidence is insufficient to support the jury's conclusion that he was the person who committed the crime for which he was tried, James Lee Botley¹ appeals his conviction for aggravated robbery, a first-degree felony. *See* Tex. Penal Code Ann. § 29.03(a)(2), (b) (West 2011). We rule that the evidence

¹ The indictment refers to the appellant as James Lee Botley aka James Botley. The trial court's judgment identifies him as James Lee Botley.

supports the jury's conclusion that Botley is the person who committed the robbery.

Background

In 2012, a grand jury indicted Botley for robbing I.M.² with a firearm. The robbery occurred at a convenience store on the morning of November 22, 2012. I.M. was working in the store as a clerk. During the trial, I.M. testified that he was robbed by a man holding a gun, wearing a black mask that covered his face, a hood over his head, and a white sock that covered his hand. I.M. indicated that immediately after the robbery, the robber fled the store with a green money bag bearing a specific bank name, which contained approximately \$2,000. After the robber fled, I.M. called the police.

Eleven other witnesses testified during the guilt-innocence phase of Botley's trial. The witnesses called by the State included the owner of the liquor store located in a parking lot shared by the convenience store. The remaining witnesses consisted of two Port Arthur police officers who were involved in the investigation of the robbery and of eight individuals employed by various government entities

² To protect the victim's privacy, we identify him by using his initials. *See* Tex. Const. art. I, § 30 (granting crime victims "the right to be treated with fairness and with respect for the victim's dignity and privacy throughout the criminal justice process").

who were involved in the collection, examination, and testing of the various items that police collected during the investigation of the robbery.

Although Botley was present during the trial, I.M. testified that he could not identify Botley as the person who had committed the robbery. I.M. explained that the robber had worn a hood over his head and a stocking cap over his face to conceal his identity. Following the robbery, Port Arthur Police Officer Brian Broussard found three items near the store that were apparently used in the robbery. The items included a green money bag with a bank logo consistent with the one described by I.M. during the trial, a black stocking cap, and a white cotton sock. These items were found several blocks from the convenience store. After Officer Broussard recovered the items, he turned them over to the Department for further testing.

Officer Tomie Gipson, also involved in the investigation of the robbery, learned on the morning the robbery occurred that the owner of a liquor store near the convenience store had cameras on the premises that had captured images of a man backing a white car into an alley located behind the liquor store. The liquor store surveillance videos were admitted into evidence during the trial. They show a white sedan back into the alley behind the liquor store, and then show a man wearing a stocking cap on his head and white sock on his hand get out of the car.

The face of the man in this footage is clearly visible, and after the man exits the white sedan, he leaves the alley on foot, in the general direction of the convenience store. A short time later, the same man can be seen returning to the alley, where he opens the car door and drives the car out of the alley. On returning to the alley, the man in the video is wearing a black stocking cap on his head, and the stocking is being used to mask the man's face. The man in the alley is also seen holding a bag that appears to be a money bag.

According to Officer Gipson and Officer Broussard, after they obtained a description of the white sedan from the liquor store's surveillance cameras, they gave other officers in the area a description of the car and alerted them to be on the lookout for a car matching the one seen in the video.

During the trial, the jury also viewed surveillance videos taken from cameras at the convenience store. The surveillance videos from the convenience store show a man wearing clothes that match the clothes of the man seen in the footage of the cameras located at the liquor store. However, the man seen in the footage from the convenience store has a hood over his head, and his face is not visible. The convenience store footage also depicts the robbery as it occurred, but the perpetrator's face is not visible because the man who committed the robbery concealed his face with the stocking cap.

Officer Gipson explained that on the afternoon of the robbery, he located a white sedan at an apartment complex that matched the description of the one in surveillance footage taken from the camera that captured images in the alley behind the liquor store. Officer Gipson explained that after he determined who owned the white sedan in the apartment parking lot, he went to the owner's apartment and spoke to her. He then showed the owner of the white sedan a duplicate of the video taken from the cameras at the liquor store. Officer Gibson indicated that after confirming that the car found at the apartment complex was the same car that is in the surveillance footage, he asked the owner of the white sedan if he could speak with her son, Botley, who was inside the apartment. Officer Gibson testified that he knew the man seen in the footage taken in the alley and he identified the man as Botley. Botley was arrested and charged with robbing the convenience store that same day.

The remaining witnesses who testified in the guilt-innocence phase of the trial indicated that they were involved in the examination, testing, and storage of the material gathered by the police during the investigation of the robbery. Briefly, their testimony indicates that Botley's DNA was found inside the black stocking cap, which police found several blocks from the convenience store. The testimony of these witnesses also demonstrates that Botley could not be excluded as a

contributor to the DNA that investigators found on the outside of the black stocking cap and the white sock, which police found near the black stocking cap.

At the conclusion of the trial, the jury found Botley guilty of having committed the aggravated robbery that occurred at the convenience store. During the punishment phase of the trial, Botley pled true to the enhancement allegations of the indictment; the enhancement paragraphs allege that Botley committed four prior felonies. At the conclusion of the trial's punishment phase, the jury found that Botley was a habitual felony offender, and assessed his punishment at confinement in the Institutional Division of the Texas Department of Criminal Justice for a term of forty years. *See* Tex. Penal Code Ann. § 12.42(d) (West Supp. 2015).

Legal Sufficiency

In a single issue, Botley argues that the evidence showing that he was the person who robbed I.M. is insufficient to support his conviction. Botley suggests his conviction should be reversed because I.M. failed to positively identify him as the person who committed the robbery, because the various items that police found in the street after the robbery—the stocking cap, the sock, and the money bag—were not found in his possession, and because the forensic tests that investigators performed on the stocking cap and white sock indicated that multiple people

contributed DNA to these items. According to Botley, there was no evidence showing when or how his DNA was actually placed on the stocking cap and sock.

When reviewing whether evidence in a criminal case is sufficient to support a defendant's conviction, we review all of the evidence in the light most favorable to the verdict, and then determine whether, based on the evidence and reasonable inferences from the evidence, rational jurors could have found that the defendant committed the essential elements of the crime under a standard of beyond reasonable doubt. *See Roberts v. State*, 273 S.W.3d 322, 326 (Tex. Crim. App. 2008) (citing *Jackson v. Virginia*, 443 U.S. 307, 318-19 (1979)). By reviewing the evidence in the light most favorable to the verdict, the appeals court gives the jury proper deference, allowing the jury to fulfill its responsibility to fairly resolve any conflicts that may exist in the testimony, to weigh the evidence, and to draw reasonable inferences from the evidence that is admitted during a defendant's trial. *See Hooper v. State*, 214 S.W.3d 9, 13 (Tex. Crim. App. 2007); *see also Williams v. State*, 235 S.W.3d 742, 750 (Tex. Crim. App. 2007). In a sufficiency review, it is not our role to substitute our judgment for the factfinder's when the factfinder's conclusions are reasonable based on the evidence from the trial. *See Dewberry v. State*, 4 S.W.3d 735, 740 (Tex. Crim. App. 1999).

Under Texas law, a person commits a 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 (West 2011). Aggravated robberies may be committed in several different ways, including by the defendant’s use or exhibition of a deadly weapon during the robbery. *Id.* § 29.03(2). On appeal, Botley has not challenged the jury’s determination that a firearm was used during the robbery.

During Botley’s trial, the jury viewed surveillance videos of the events that occurred before, during, and after the robbery. The video from the liquor store shows a male, who witnesses identified as Botley, driving and parking a white sedan in an alley behind the liquor store. The evidence at trial established that the white sedan belonged to Botley’s mother. Witnesses identified Botley as the man who is seen getting out of the white sedan in the alley behind the liquor store. The surveillance footage from the security cameras that the jurors viewed during the trial allowed the jury to reasonably conclude that the man seen parking the white sedan in the alley behind the liquor store is the same man who robbed the convenience store.

In advancing his argument on appeal, Botley points to various facts that he contends are inconsistent with the jury's conclusion that he was the person who committed the robbery. For example, he points to the fact that I.M. testified that he could not identify Botley as being the person who robbed him. He notes that the black stocking cap, money bag, and white sock were not found in his possession when he was arrested. However, each of the facts about a case that are admitted during a trial "need not point directly and independently to the guilt of the appellant, as long as the cumulative force of all the incriminating circumstances is sufficient to support the conviction." *Hooper v. State*, 214 S.W.3d at 13. Whether the necessary inferences that a jury has decided to make are reasonable is determined, on appeal, based on "the combined and cumulative force of all the evidence when viewed in the light most favorable to the verdict." *Clayton v. State*, 235 S.W.3d 772, 778 (Tex. Crim. App. 2007) (quoting *Hooper*, 214 S.W.3d at 16-17).

The evidence presented during Botley's trial was more than circumstantial, as it tied him directly to the convenience store robbery. He was identified as the person in the surveillance footage, and Botley's activity in the alley behind the liquor store is consistent with the jury's conclusion that the man in the footage is the man who committed the robbery. The stocking cap and sock, items consistent

with the ones seen in the surveillance videos, were found by police on the morning of the robbery several blocks from the convenience store, and Botley's DNA was found on the inside of the black stocking cap and white sock. The jury could have reasonably believed that the items had been used in the robbery. Additionally, there was evidence that I.M. feared imminent bodily injury, as I.M. testified that he feared for his life when the robber pointed the gun at him.

We conclude the facts admitted at trial regarding the circumstances of the crime allowed the jury to reasonably conclude that Botley was the person who committed the aggravated robbery at issue. *See Jackson*, 443 U.S. at 319 (noting that jurors are allowed to fairly resolve conflicts in the testimony, to weigh the evidence, and to draw reasonable inferences from the facts in reaching its conclusion). Even though I.M. could not identify Botley as the person who robbed him, and the bank bag, the black stocking cap, the white sock, the gun used in the robbery, and money taken during the robbery were not found in Botley's possession upon his arrest, the jury, as the factfinder, could nevertheless reasonably find that Botley committed the aggravated robbery from the surveillance videos, the testimony of witnesses who identified him as the person in the surveillance videos, and from the fact that his DNA was found on the black stocking cap that was recovered by police near where the robbery occurred. *Id.*

We overrule Botley's sole issue, and we affirm the trial court's judgment.

AFFIRMED.

HOLLIS HORTON
Justice

Submitted on June 5, 2015
Opinion Delivered May 18, 2016
Do Not Publish

Before McKeithen, C.J., Horton and Johnson, JJ.