



**COURT OF APPEALS
SECOND DISTRICT OF TEXAS
FORT WORTH**

NO. 02-16-00323-CR

DERIC KNIGHT

APPELLANT

V.

THE STATE OF TEXAS

STATE

FROM THE 16TH DISTRICT COURT OF DENTON COUNTY
TRIAL COURT NO. F15-1448-16

MEMORANDUM OPINION¹

I. INTRODUCTION

A jury found Appellant Deric Knight guilty of aggravated assault of Carrie Engle as charged in the indictment, and the trial court sentenced him to thirteen years' confinement. See Tex. Penal Code Ann. § 22.01(a)(2) (West Supp. 2016), § 22.02(a)(2) (West 2011). In a single issue, Knight argues that the

¹See Tex. R. App. P. 47.4.

evidence is insufficient to support his conviction. For the reasons set forth below, we will modify the judgment to reflect a conviction for “aggravated assault” rather than “aggravated assault family violence” and will affirm the judgment as modified.

II. FACTUAL BACKGROUND

Knight married Carrie Engle in 2009. In May 2014, they became friends with their neighbor Robert Tracey Odneal. The following month when Knight and Carrie began having marital problems, Carrie started having an affair with Odneal, which Knight discovered in September 2014. Although the affair had concluded by November 2014, Carrie still had contact with Odneal.

On the evening of November 12, 2014, Carrie texted with Odneal to see if she could obtain narcotics from him. They arranged to meet at the Kroger parking lot near their homes. When Carrie arrived, she parked on the passenger side of Odneal’s truck and got into the passenger seat of his truck.

Approximately ten or fifteen minutes later, Carrie saw a white Toyota approaching her and recognized the vehicle as one she owned.² Knight, who was driving the white Toyota, parked diagonally in front of Odneal’s truck. Carrie felt fear because she had been “busted” and agreed with Odneal that he should lock the doors.

²The record revealed that the couple owned a Volkswagen Rabbit, which Carrie drove to Kroger, and a white Toyota Camry.

Knight exited the Toyota, stared directly at Odneal, walked to the driver's side of the truck where Odneal was sitting, and tried to open the door. Carrie saw Knight raise his arms, and though she could not see if he had anything in his hands, she ducked. Carrie heard "a very loud blast" and the shattering of glass, and she screamed. Odneal pulled out of the parking space and screamed, "He shot me, he shot me." Carrie looked out the back window and saw Knight, "who was standing there aiming a gun."

Oodneal drove to the back of the Kroger, and Carrie screamed for him to stop and let her out. Carrie explained, "I think with the amount of fear that I was feeling, I knew that I almost felt like I would be better off alone than with [Oodneal]." Carrie began walking toward her home and called Knight to find out "what was going on, where he was, what just happened, [and] what was he thinking." Carrie said that there was a lot of screaming while she was on the phone with Knight, that he admitted firing a weapon, and that he blamed her for what had happened.

Knight picked up Carrie, and they drove home. During the drive, Knight told Carrie that he did not fire a second shot because the gun had jammed. When they returned home, Carrie saw Knight hide his gun.

A few minutes after Knight and Carrie got home, the police arrived. Carrie initially gave the police as little information as possible because she felt that it was her obligation to protect Knight. She ultimately "came clean" because she knew that the police were not going to leave until they knew what had happened.

When Knight was initially interviewed by police, he said that he had broken the window in Odneal's truck with a knife. Knight then said that he had shattered the window in Odneal's truck with a club. Knight ultimately admitted that he had a firearm in his possession on the night in question, that he had displayed it, and that he had used the butt of the firearm to smash the window in Odneal's truck. Knight explained to the police that his finger was inadvertently in the trigger guard of the firearm, which caused him to pull the trigger and caused a bullet to go through the window into the upper plastic apex just inside the driver's side window of Odneal's truck.

Odoneal testified at trial that he saw a gun in Knight's hand on November 12, 2014, and that he told Carrie to get down. Odoneal said that it scared Carrie when she heard the boom and that she screamed, "[L]et me out, let me out, let me out," as they were leaving. Odoneal gave a written statement to police in which he said that Knight had shot at him, but he testified at trial that he believed that the driver's side window of his truck was broken by the back of Knight's hand. The police photographed Odoneal's truck, and the photographs show a bullet hole near the frame and a shattered driver's side window.

After hearing the above evidence, the jury found Knight guilty of aggravated assault as charged in the indictment, and the trial court sentenced him to thirteen years' confinement.

III. SUFFICIENCY OF THE EVIDENCE

In his sole issue, Knight argues that the evidence is insufficient to support his conviction because the State failed to prove beyond a reasonable doubt that he intentionally or knowingly threatened Carrie with imminent bodily injury and that during the commission of the assault, he used or exhibited a deadly weapon as alleged in the indictment.

A. Standard of Review

In our due-process review of the sufficiency of the evidence to support a conviction, we view all of the evidence in the light most favorable to the verdict to determine whether any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. *Jackson v. Virginia*, 443 U.S. 307, 319, 99 S. Ct. 2781, 2789 (1979); *Jenkins v. State*, 493 S.W.3d 583, 599 (Tex. Crim. App. 2016). This standard gives full play to the responsibility of the trier of fact to resolve conflicts in the testimony, to weigh the evidence, and to draw reasonable inferences from basic facts to ultimate facts. *Jackson*, 443 U.S. at 319, 99 S. Ct. at 2789; *Jenkins*, 493 S.W.3d at 599.

The trier of fact is the sole judge of the weight and credibility of the evidence. See Tex. Code Crim. Proc. Ann. art. 38.04 (West 1979); *Blea v. State*, 483 S.W.3d 29, 33 (Tex. Crim. App. 2016). Thus, when performing an evidentiary sufficiency review, we may not re-evaluate the weight and credibility of the evidence and substitute our judgment for that of the factfinder. See *Montgomery v. State*, 369 S.W.3d 188, 192 (Tex. Crim. App. 2012). Instead, we

determine whether the necessary inferences are reasonable based upon the cumulative force of the evidence when viewed in the light most favorable to the verdict. *Murray v. State*, 457 S.W.3d 446, 448 (Tex. Crim. App.), *cert. denied*, 136 S. Ct. 198 (2015). We must presume that the factfinder resolved any conflicting inferences in favor of the verdict and defer to that resolution. *Id.* at 448–49; *see Blea*, 483 S.W.3d at 33.

B. Law on Aggravated Assault

A person commits the offense of aggravated assault if the person intentionally or knowingly threatens another with imminent bodily injury, including the person's spouse, and the person uses or exhibits a deadly weapon during the commission of the assault. Tex. Penal Code Ann. §§ 22.01(a)(1), .02(a)(2). It is not necessary that the defendant make any verbal threats. *Cantu v. State*, 953 S.W.2d 772, 775 (Tex. App.—Corpus Christi 1997, *pet. ref'd*).

C. Sufficient Evidence Supports Conviction for Aggravated Assault

Here, the evidence shows that Knight tracked down Carrie at Kroger, parked his car diagonally in front of Odneal's truck, and attempted to open the driver's side door of the truck. According to the statement Knight gave to the police, Knight then used the butt of the firearm, which he had brought with him, to break the driver's side window on the truck, and the firearm discharged. As the preceding events played out, Carrie agreed that Odneal should lock the doors of the truck; that she saw Knight raise his arms and that she ducked down; that she heard a loud noise and screamed; and that due to the fear she felt, she wanted

out of the truck. A rational jury could conclude that Knight's conduct threatened Carrie and placed her in fear. Although Carrie did not see Knight "standing there aiming the gun" until after the shot was fired, Carrie's actions—having the doors locked, ducking down, and screaming—demonstrate that she perceived some threat of imminent bodily injury, and those actions, coupled with the fact that Knight did exhibit a firearm while threatening her, are sufficient to sustain his conviction for aggravated assault as charged in the indictment. See *Olivas v. State*, 203 S.W.3d 341, 350 (Tex. Crim. App. 2006) (stating that there is no statutory requirement that a victim must instantaneously perceive or receive the threat of imminent bodily injury as the actor is performing); *Fagan v. State*, 362 S.W.3d 796, 799 (Tex. App.—Texarkana 2012, pet. ref'd) ("The act of pointing a loaded gun at an individual is, by itself, threatening conduct that supports a conviction for aggravated assault."); cf. *Pace v. State*, Nos. 02-14-00282-CR, 02-14-00283-CR, 02-14-00284-CR, 2015 WL 3855588, at *4 (Tex. App.—Fort Worth June 18, 2015, no pet.) (mem. op., not designated for publication) ("A rational jury could conclude that Caylie was fearful from her testimony that when she saw Pace's left arm coming out of the car, she pulled Suzanne down with her in the middle of the car.").

Despite the preceding evidence establishing each of the necessary elements of aggravated assault, Knight attempts to undermine the jury's verdict by questioning the credibility of Carrie's testimony about seeing the gun after the shot was fired because she did not include that fact in her statement to the

police. The jury—not this court—was tasked with making credibility determinations; thus, we must presume that the jury resolved any conflicting inferences in favor of the verdict and defer to that resolution. See *Blea*, 483 S.W.3d at 33; *Murray*, 457 S.W.3d at 448–49.

We hold that, when viewed in the light most favorable to the verdict, sufficient evidence exists for a reasonable jury to find Knight guilty of aggravated assault beyond a reasonable doubt. See *Jackson*, 443 U.S. at 319, 324–26, 99 S. Ct. at 2789, 2792–93; *Olivas*, 203 S.W.3d at 350–51 (holding similar facts sufficient to support conviction for aggravated assault). We overrule Knight’s sole issue.³

³We note that the judgment states that Knight was convicted of “aggravated assault family violence” but that both Knight and the State refer to his conviction as “aggravated assault.” Because neither the indictment nor the jury charge contain language that Carrie was a member of Knight’s family or household and because the judgment reflects a conviction for a second-degree felony, we modify the judgment to delete the phrase “family violence.” See Tex. R. App. P. 43.2(b); Tex. Penal Code Ann. § 22.02(b)(1) (stating that aggravated assault is a second-degree felony, “except that the offense is a felony of the first degree if: the actor uses a deadly weapon during the commission of the assault and causes serious bodily injury to a person whose relationship to or association with the defendant is described by Section 71.0021(b), 71.003, or 71.005” of the family code); cf. *Morrison v. State*, 480 S.W.3d 647, 667 (Tex. App.—El Paso 2015, no pet.) (modifying judgment to correct the penal code section under which appellant was convicted).

IV. CONCLUSION

Having overruled Knight's sole issue and having modified the judgment to reflect that Knight was convicted of aggravated assault, we affirm the trial court's judgment as modified.

/s/ Sue Walker
SUE WALKER
JUSTICE

PANEL: WALKER, MEIER, and KERR, JJ.

DO NOT PUBLISH
Tex. R. App. P. 47.2(b)

DELIVERED: May 25, 2017