



**IN THE  
TENTH COURT OF APPEALS**

**No. 10-18-00354-CR**

**RAFAEL GINN,**

**Appellant**

**v.**

**THE STATE OF TEXAS,**

**Appellee**

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**From the 361st District Court  
Brazos County, Texas  
Trial Court No. 17-03885-CRF-361**

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**MEMORANDUM OPINION**

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Rafael Ginn was convicted of aggravated assault of a public servant and sentenced to 90 years in prison. TEX. PENAL CODE § 22.02(b)(2)(B). Because the evidence is insufficient to support the trial court's assessment of attorney's fees, but the evidence is sufficient to support Ginn's conviction, the trial court's judgment is modified to delete the assessment of attorney's fees and affirmed as modified.

**BACKGROUND**

Joel Bravo, an officer with the Bryan Police Department, was investigating, along

with other officers, an armed robbery at a convenience store in December of 2016. It was cold out. Bravo, while in his patrol car, observed another officer pull over his patrol car and attempt to talk to a person in a light blue hoodie and dark pants. When the person ran, Bravo followed. As Bravo turned the corner, he saw the person in the hoodie raise his arm and fire a weapon at him. The bullet went through Bravo's windshield and hit his chest. Fortunately, Bravo had on a bullet proof vest. When Bravo realized he was hit, he called out over the radio to inform the others what had happened. He also sped by the shooter to get away. The shooter continued to shoot at Bravo while the shooter ran in the opposite direction.

Within minutes of the shooting, Ginn was located hiding in a Suburban and sweating. He then ran from officers and resisted arrest. The weapon used was found in the Suburban and clothes matching the description of the shooter were found nearby.

#### **SUFFICIENCY OF THE EVIDENCE – ATTORNEY'S FEES**

In his first issue, Ginn contends that the evidence is insufficient to support the trial court's assessment of court appointed attorney's fees. The State concedes that the evidence is insufficient in this regard. In accordance with the opinion of the Court of Criminal Appeals in *Mayer v. State*, 309 S.W.3d 552, 557 (Tex. Crim. App. 2010), we agree that the evidence is insufficient, and the judgment should be modified to delete this assessment. *See Standmire v. State*, 475 S.W.3d 336, 345 (Tex. App. – Waco 2014, pet. ref'd). Ginn's first issue is sustained.

#### **SUFFICIENCY OF THE EVIDENCE – SUPPORTING THE CONVICTION**

In his second issue, Ginn contends the evidence is insufficient to support his

conviction. Ginn specifically argues the evidence of identity is insufficient but asserts the evidence as a whole must be sufficient for a factfinder to rationally find each element beyond a reasonable doubt.

The Court of Criminal Appeals has expressed our standard of review of a sufficiency issue as follows:

When addressing a challenge to the sufficiency of the evidence, we consider whether, after viewing all of the evidence in the light most favorable to the verdict, 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, 61 L. Ed. 2d 560 (1979); *Villa v. State*, 514 S.W.3d 227, 232 (Tex. Crim. App. 2017). This standard requires the appellate court to defer "to the responsibility of the trier of fact fairly 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. We may not re-weigh the evidence or substitute our judgment for that of the factfinder. *Williams v. State*, 235 S.W.3d 742, 750 (Tex. Crim. App. 2007). The court conducting a sufficiency review must not engage in a "divide and conquer" strategy but must consider the cumulative force of all the evidence. *Villa*, 514 S.W.3d at 232. Although juries may not speculate about the meaning of facts or evidence, juries are permitted to draw any reasonable inferences from the facts so long as each inference is supported by the evidence presented at trial. *Cary v. State*, 507 S.W.3d 750, 757 (Tex. Crim. App. 2016) (citing *Jackson*, 443 U.S. at 319); see also *Hooper v. State*, 214 S.W.3d 9, 16-17 (Tex. Crim. App. 2007). We presume that the factfinder resolved any conflicting inferences from the evidence in favor of the verdict, and we defer to that resolution. *Merritt v. State*, 368 S.W.3d 516, 525 (Tex. Crim. App. 2012). This is because the jurors are the exclusive judges of the facts, the credibility of the witnesses, and the weight to be given to the testimony. *Brooks v. State*, 323 S.W.3d 893, 899 (Tex. Crim. App. 2010). Direct evidence and circumstantial evidence are equally probative, and circumstantial evidence alone may be sufficient to uphold a conviction so long as the cumulative force of all the incriminating circumstances is sufficient to support the conviction. *Ramsey v. State*, 473 S.W.3d 805, 809 (Tex. Crim. App. 2015); *Hooper*, 214 S.W.3d at 13.

We measure whether the evidence presented at trial was sufficient to support a conviction by comparing it to "the elements of the offense as defined by the hypothetically correct jury charge for the case." *Malik v. State*, 953 S.W.2d 234, 240 (Tex. Crim. App. 1997). The hypothetically correct jury charge is one that "accurately sets out the law, is authorized by the indictment, does not unnecessarily increase the State's burden of proof or unnecessarily restrict the State's theories of liability, and adequately describes the particular offense for which the defendant was tried." *Id.*; see also *Daugherty v. State*, 387 S.W.3d 654, 665 (Tex. Crim. App. 2013). The "law as authorized by the indictment" includes the statutory elements of the offense and those elements as modified by the indictment. *Daugherty*, 387 S.W.3d at 665.

*Zuniga v. State*, 551 S.W.3d 729, 732-33 (Tex. Crim. App. 2018).

Ginn was charged with aggravated assault of a public servant. TEXAS PENAL CODE § 22.02(b)(2)(B). A person commits this offense if he intentionally, knowingly, or recklessly causes bodily injury to another he knows is a public servant, while the public servant is lawfully discharging an official duty, and the person uses or exhibits a deadly weapon. *Id.*

Here, the evidence shows that Bravo saw a male in a light blue hoodie and dark pants aim a gun and fire at him through the windshield of his patrol car. Within minutes, Ginn was found hiding in a Suburban two blocks from where Bravo was shot. Before he could be taken into custody, Ginn ran from the police and resisted arrest. A gun was found in the Suburban. By testing casings and a bullet found at the scene, a firearms expert determined that the gun found was the same gun used in the offense. A light blue hoodie was located in a yard only 60-70 yards from the Suburban. A pair of dark jeans with an attached holster were located on the ground near the Suburban. DNA evidence

found on the gun matched Ginn's profile. Ginn's cell phone, found in the Suburban, contained a video of Ginn, recorded five days before the shooting, handling a gun which was determined to be the gun used in the shooting. The holster in the video looked the same as the holster found on the pair of jeans near the Suburban. Ginn agreed that the gun found in the Suburban fit the holster found on the jeans. Gunshot residue found on Ginn's hand revealed that Ginn had either recently fired a weapon or was in close proximity to a weapon when it was fired.

Ginn conceded at trial that the evidence presented pointed to him as the shooter; but he contended that someone else committed the offense. He asserts on appeal that the evidence is insufficient to support his conviction because, although a State's witness testified that the person Ginn named as the person who shot Bravo was arrested and cleared of the shooting, Ginn testified that the police arrested and cleared the wrong person. However, other evidence could have substantially undermined Ginn's credibility. The jury heard evidence of Ginn's substantial criminal history: failure to identify, two convictions, assault-family violence, two convictions, and burglary of a habitation; and heard Ginn admit to initially lying to a detective and a Texas Ranger when giving his statement regarding this offense. Further, Ginn testified that he knew he could not possess a firearm because he was a convicted felon but admitted he possessed the firearm shown in the video on his phone. Because jurors are the exclusive judges of the facts, the credibility of the witnesses, and the weight to be given to the testimony, they

were free to resolve any conflicting inferences from the evidence in favor of the verdict and could have reasonably disbelieved Ginn's version of who committed the offense.

Accordingly, after viewing all of the evidence in the light most favorable to the verdict, any rational trier of fact could have found the essential elements of the offense beyond a reasonable doubt; and thus, the evidence was sufficient to support Ginn's conviction. Ginn's second issue is overruled.

#### CONCLUSION

Having found the evidence sufficient to support the conviction but insufficient to support the trial court's assessment of attorney's fees in the judgment, we delete that assessment and modify the judgment to show the amount of costs owed by Ginn as \$344.00 for court costs and no attorney's fees. We affirm the trial court's judgment as modified.

TOM GRAY  
Chief Justice

Before Chief Justice Gray,  
Justice Davis, and  
Justice Neill  
Affirmed as modified  
Opinion delivered and filed July 23, 2020  
Do not publish  
[CRPM]

