

TEXAS COURT OF APPEALS, THIRD DISTRICT, AT AUSTIN

NO. 03-21-00060-CR

Bernard Christian Uhler, III, Appellant

v.

The State of Texas, Appellee

**FROM THE COUNTY COURT OF LAMPASAS COUNTY
NO. 21,583, THE HONORABLE RANDALL J. HOYER, JUDGE PRESIDING**

MEMORANDUM OPINION

Bernard Christian Uhler, III, was convicted of assault family violence and sentenced to one year in jail. *See* Tex. Penal Code §§ 12.21, 22.01. On appeal, Uhler argues that the evidence was insufficient to support his conviction. We will affirm the trial court's judgment of conviction.

BACKGROUND

After the police responded to a 911 call regarding an incident at Uhler's home, he was arrested and charged with assaulting his fifteen-year-old stepdaughter Beth by allegedly hitting her head with a piece of lumber.¹ During the trial, the following witnesses testified:

¹ Because Uhler's stepdaughter is a minor, we will refer to her by an alias. *See* Tex. R. App. P. 9.10(a)(3).

Uhler's neighbor, Beth, Uhler's wife who is also Beth's mother, one of the responding police officers, and Uhler.

In her testimony, the neighbor explained that she lives across the street from Uhler and heard an argument coming from his house on the day in question. She testified that she observed Beth holding a stick, that Uhler and Beth struggled for control over the stick, and that Uhler took the stick away from Beth. Next, she related that she saw Uhler hold the stick in the air as though he was going to use it to hit someone and then swing the stick in the direction of his wife. Although she testified that she did not see the stick hit anyone, the neighbor explained that Uhler's wife and Beth were upset after he swung the stick and that Beth had a visible "bump on her head." The neighbor testified that the injury looked recent and painful.

After the neighbor testified, Beth was called as a witness. In her testimony, Beth explained that before the incident Uhler told her mother about her sneaking out at night. Beth also related that she picked up a stick and kept it in her hand but that Uhler took the stick out of her hand and threw it to the ground. Additionally, Beth testified that she was standing behind her mother, that her mother picked up the stick to hit Uhler, that her mother hit her on the head while moving the stick backward before swinging at him, and that the injury hurt. In her testimony, Beth admitted that she told the police that Uhler hit her but explained that at that time she "was mad at [Uhler] for telling [her] mom" about her sneaking out and that she did not "want [her] mom to get in trouble" and decided "to cover for [her] mom." Further, Beth related that after the police left and when they calmed down and were able to talk to each other about what happened, she and her mother realized that Uhler did not hit her.

Next, Uhler's wife testified regarding her recollection of the incident. She related that she and Uhler got into an argument after Uhler told her that Beth had been sneaking out of

the house to see a man who lived nearby, that she did not believe what Uhler had said, that Beth picked up a stick and told them that they “need[ed] to stop arguing,” and that Uhler grabbed the stick from Beth and threw it on the ground. Uhler’s wife testified that she grabbed the stick to hit Uhler and that when she pulled the stick back to hit him, she inadvertently hit Beth, who had been standing behind her. Further, she explained that this is how Beth got injured. However, she admitted that when the police initially arrived at her house, she told them that Uhler hit Beth. Uhler’s wife also testified that she called the police on the day after the incident to explain that she was the one who injured Beth and that she signed an affidavit of non-prosecution asking the prosecutor not to pursue any charges against Uhler. When explaining why she initially provided a different version to the police, she related that she was attempting to corroborate Beth’s story because she “wholeheartedly defend[s]” Beth and that she first figured out what really happened when talking with Beth after the police left.

The police officer testified that he responded to a 911 call and talked with Uhler’s wife and Beth when he arrived at their home. The officer described both women as being upset and crying, and he related that Beth had a large knot on her forehead and appeared to be in pain. The officer testified that he photographed Beth’s injury. The photos were admitted into evidence and show an injury on Beth’s forehead. In addition, a recording from the officer’s body camera was admitted into evidence. On the recording, Uhler’s wife tells the officer that Uhler started yelling, that she told him to leave, that he tried to hit her, that Beth also told him to leave, that he took away from Beth a board that she had been holding, and that he hit Beth with the board. Additionally, Beth explained on the recording that the stick resembled a piece of lumber, that Uhler yanked the stick out of her hand, and that he hit her on the head while she attempted to move her mother out of the way.

During his case-in-chief, Uhler testified that he and his wife argued on the day in question, that they argue frequently, and that she has anger issues. Further, Uhler explained that Beth rushed at him with a stick that she had been holding after he loaded up his truck to leave, that he “jerked the stick away from her” and “threw it on the ground,” and that he charged at her. Next, Uhler testified that his wife got between Beth and him, “rear[ed] the stick back to hit him,” and hit him on his arm. Uhler related that afterwards he noticed Beth “grabbing her head,” wanted to help her, and asked if she was ok, but he also admitted that he left in his truck without receiving an answer. Further, Uhler agreed that it was likely that the police had been called because his neighbors had seen the incident. Finally, Uhler denied hitting Beth with a stick.

After considering the evidence presented at trial, the trial court found him guilty of assaulting Beth.

DISCUSSION

In one issue on appeal, Uhler challenges the sufficiency of the evidence supporting his conviction. When presenting this issue, Uhler argues that “[t]he best evidence of what really occurred” on the day in question was given by the three individuals involved: Beth, his wife, and him. Moreover, Uhler highlights that all three of them testified that he did not hit Beth, that Beth provided an explanation under oath regarding why she initially told the police otherwise, and that Beth and his wife both testified that they realized what really happened after the police left. Further, Uhler emphasizes that his neighbor admitted at trial that she did not actually see him hit Beth with a stick and that there were no other witnesses to the event. For these reasons, Uhler contends that the evidence is insufficient to support his conviction.

“Evidence is sufficient to support a criminal conviction if a rational” factfinder “could find each essential element of the offense beyond a reasonable doubt.” *Stahmann v. State*, 602 S.W.3d 573, 577 (Tex. Crim. App. 2020) (citing *Jackson v. Virginia*, 443 U.S. 307, 319 (1979)). In making this determination, “[w]e view the evidence in the light most favorable to the verdict and consider all of the admitted evidence, regardless of whether it was properly admitted.” *Id.* The factfinder “is the sole judge of credibility and weight to be attached to the testimony of the witnesses.” *Id.* Factfinders “can draw reasonable inferences from the evidence so long as each inference is supported by the evidence produced at trial,” *id.*, and are “free to apply common sense, knowledge, and experience gained in the ordinary affairs of life in drawing reasonable inferences from the evidence,” *Eustis v. State*, 191 S.W.3d 879, 884 (Tex. App.—Houston [14th Dist.] 2006, pet. ref’d). “When the record supports conflicting inferences, we presume that the” factfinder “resolved the conflicts in favor of the verdict and defer to that determination.” *Merritt v. State*, 368 S.W.3d 516, 525-26 (Tex. Crim. App. 2012).

Appellate courts must “determine whether the necessary inferences are reasonable based upon the combined and cumulative force of all the evidence when viewed in the light most favorable to the verdict.” *Hooper v. State*, 214 S.W.3d 9, 16-17 (Tex. Crim. App. 2007). Appellate courts also must bear in mind that “direct and circumstantial evidence are treated equally” and that “[c]ircumstantial evidence is as probative as direct evidence in establishing the guilt of an actor” and “can be sufficient” on its own “to establish guilt.” *Kiffe v. State*, 361 S.W.3d 104, 108 (Tex. App.—Houston [1st Dist.] 2011, pet. ref’d). The evidence is legally insufficient if “the record contains no evidence, or merely a ‘modicum’ of evidence, probative of an element of the offense” or if “the evidence conclusively establishes a reasonable doubt.” *Id.* at 107 (quoting *Jackson*, 443 U.S. at 320).

Under the terms of the Penal Code, a person commits the offense of assault if he “intentionally, knowingly, or recklessly causes bodily injury to another.” Tex. Penal Code § 22.01(a)(1). The Penal Code defines “bodily injury” as “physical pain, illness, or any impairment of physical condition.” *Id.* § 1.07(a)(8). “Any physical pain, however minor, will suffice to establish bodily injury.” *Garcia v. State*, 367 S.W.3d 683, 688 (Tex. Crim. App. 2012). The factfinder “is permitted to draw . . . an inference that the victim suffered pain as a result of her injuries.” *Arzaga v. State*, 86 S.W.3d 767, 778 (Tex. App.—El Paso 2002, no pet.).

Although Uhler’s neighbor admitted that she did not actually see him strike Beth with the stick, she also testified that she saw Uhler take the stick from Beth, hold the stick in the air as if he were going to hit someone with it, and aim at his wife. Further, the neighbor related that she next observed that Uhler’s wife and Beth appeared upset and that Beth had a fresh injury on her forehead that looked painful. That injury was documented in photographs taken by the responding officer and in the recording from his body camera. The officer testified that Beth appeared to be in pain, and Beth similarly testified that the injury hurt. *Cf. Dunn v. State*, No. 05-10-00196-CR, 2011 WL 227715, at *3 (Tex. App.—Dallas Jan. 26, 2011, pet. ref’d) (op., not designated for publication) (determining that evidence supported inference that defendant injured alleged victim).

In addition, although Uhler also denied hitting Beth with a stick, the trial court was tasked with deciding what weight, if any, to give to his testimony. *See Perales v. State*, 622 S.W.3d 575, 582 (Tex. App.—Houston [14th Dist.] 2021, pet. ref’d) (explaining that factfinder “was free to disregard appellant’s self-serving testimony”). Further, although Uhler’s wife and Beth both denied at trial that Uhler hit Beth with a stick and although his wife testified that she filled out an affidavit of non-prosecution and called the police to explain that she hit

Beth, contrary evidence was presented through the recording of the officer's conversation with both Uhler's wife and Beth, in which they both told the officer that Uhler hit Beth with a board.

Moreover, when resolving the conflicts in the evidence, the trial court was confronted with inconsistencies in Beth's testimony. For example, Beth first testified that she told the police that Uhler hit her with the stick because she was mad at him and did not want to get her mother in trouble, implying that she knew at that time that Uhler did not hit her; however, Beth later testified that she and her mother figured out that Uhler was not the person who hit her after the police left when she and her mother discussed the incident. In addition, the trial court was faced with Uhler's testimony stating that it was likely that the police were on the way and that he left the scene without hearing whether Beth was alright. *Cf. Alba v. State*, 905 S.W.2d 581, 586 (Tex. Crim. App. 1995) (noting that evidence of flight is "a circumstance from which an inference of guilt may be drawn").

Given our standard of review and the inferences that the trial court was free to make from the evidence presented at trial, we conclude that the evidence is sufficient to support Uhler's conviction for assault. *Cf. Dunn*, 2011 WL 227715, at *3 (concluding that evidence was sufficient to support assault conviction even though defendant and alleged victim both denied that defendant intentionally struck her where they admitted that they argued, where police officers testified regarding injuries to victim's face, where photographs of injuries were admitted, and where defendant refused to say anything to officers and instead placed his arms behind him "to facilitate being handcuffed"). Accordingly, we overrule Uhler's issue on appeal.

CONCLUSION

Having overruled Uhler's issue on appeal, we affirm the trial court's judgment of conviction.

Thomas J. Baker, Justice

Before Justices Goodwin, Baker, and Smith

Affirmed

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