NUMBER 13-19-00276-CR

COURT OF APPEALS

THIRTEENTH DISTRICT OF TEXAS

CORPUS CHRISTI - EDINBURG

STEVEN MARREL BROWN, **Appellant,**

v.

THE STATE OF TEXAS, **Appellee.**

On appeal from the 379th District Court of Bexar County, Texas.

MEMORANDUM OPINION

Before Justices Hinojosa, Perkes, and Tijerina
Memorandum Opinion by Justice Hinojosa

A jury convicted appellant Steven Marrel Brown of two counts of aggravated robbery, a first-degree felony. *See* TEX. PENAL CODE ANN. § 29.03. After pleading true to two habitual offender enhancements, the jury sentenced Brown to forty-five years' imprisonment in the Texas Department of Criminal Justice—Institutional Division for each count, with the sentences ordered to run concurrently. By one issue, Brown challenges

the sufficiency of the evidence used to convict him for one of the counts of robbery. We affirm.

I. BACKGROUND[1]

A grand jury indicted Brown on two counts of aggravated robbery against two separate employees of a Family Dollar store in San Antonio, Texas—Michael Hernandez and Gabriel Silva.

Hernandez testified first at trial. He stated that he was a stocker at Family Dollar. On the morning of April 30, 2018, Hernandez was working with his assistant manager Silva. Hernandez testified that a woman, Jennifer Tran, and a man, Brown, entered the store. Because theft is common where he works, Hernandez watched the customers closely. When he went to the front where Silva was at the register, Tran approached them brandishing a gun. Tran told Hernandez to "get down on the floor." Hernandez testified that he was scared and panicking because he thought they "were going to shoot" or "hit" him with the gun. Hernandez saw Brown keeping a look-out at the window and noted that Brown motioned that the store was closed when another customer approached the front door. Hernandez noted that Brown was now wearing a mask.

According to Hernandez, Tran told Silva to put the money from the register and a safe into a black bag she gave him. Hernandez testified that Silva acted "like he was going to cry. He was, like, scared, too." Hernandez testified that he himself was so scared

[1] This case is before this Court on transfer from the Fourth Court of Appeals in San Antonio pursuant to a docket-equalization order issued by the Supreme Court of Texas. *See* TEX. GOV'T CODE ANN. § 73.001.

that he lost control of his bladder. He recalled that Silva kept reassuring him that things would be "okay." When Tran and Brown left, Hernandez and Silva called the police. The State introduced a video of the robbery into evidence through Hernandez. Hernandez confirmed that Silva, his supervisor, was "the guy who [was] grabbing his head all the time," "nervous," and "pacing back and forth for about a minute."

The State then called Silva to the stand and informed the court that there was "a writ in place." When Silva took the stand and the court asked him to raise his right hand, Silva responded, "That's part of the testimony. I'm not doing it . . . ." After being sworn in, he proclaimed on the record, "I'm not giving a testimony. Do you hear what I'm saying? . . . I made it clear from the beginning when I first got here. I'm not testifying. What don't you understand?" The trial court held Silva in contempt of court, placed him in custody, and announced that it would appoint Silva a lawyer. The State called another witness.

The State eventually called Silva back to the stand to ask him three questions: his name, whether he was working at the Family Dollar store on April 30, 2018, and whether he was in the video. Silva acknowledged that he was working the day of the robbery and that he was on the store surveillance video.

Detective John Seaton, an eighteen-year veteran of the San Antonio Police Department, testified that he showed Silva a "blind photo lineup" of potential suspects after the robbery. Seaton explained that the term "blind" means that Seaton himself did not know who the suspect was in the photo lineup because the lineup was assembled by

by another detective. Seaton recalled that Silva "was nervous" when he showed him the lineup. He elaborated: "Just nervous. Just kind of in shock. He was involved in an aggravated robbery." Seaton reported that Silva identified the defendant Brown as one of the assailants.

The jury found Brown guilty of both counts of aggravated robbery. After pleading true to two habitual felony offender enhancements, the jury sentenced him to forty-five years imprisonment in the Texas Department of Criminal Justice—Institutional Division. Brown appeals.

II. STANDARD OF REVIEW & APPLICABLE LAW

The Due Process Clause of the Fifth and Fourteenth Amendments to the United States Constitution requires that a criminal conviction be supported by a rational trier of fact's findings that the accused is guilty of every essential element of a crime beyond a reasonable doubt. *Laster v. State*, 275 S.W.3d 512, 517 (Tex. Crim. App. 2009) (citing *Jackson v. Virginia*, 443 U.S. 307, 316 (1979)). This due process guarantee is safeguarded when a court reviews the legal sufficiency of the evidence. *Id.* Under this review, we consider all of the evidence in the light most favorable to the verdict and determine whether a rational fact finder could have found the essential elements of the crime beyond a reasonable doubt based on the evidence and reasonable inferences from that evidence. *Whatley v. State*, 445 S.W3d 159, 166 (Tex. Crim. App. 2014); *Jackson*, 443 U.S. at 319. Because the jury is the sole judge of the credibility of the witnesses and of the weight to be given to their testimony, we resolve any conflicts or inconsistencies in

the evidence in favor of the verdict. *Ramsey v. State*, 473 S.W.3d 805, 808 (Tex. Crim. App. 2015); *Wesbrook v. State*, 29 S.W.3d 103, 111 (Tex. Crim. App. 2000).

We measure the legal sufficiency of the evidence against the elements of the offense as defined by a hypothetically correct jury charge for the case. *Byrd v. State*, 336 S.W.3d 242, 246 (Tex. Crim. App. 2011). Such a 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 offense for which the defendant was tried. *Id.*

A person commits robbery if, in the course of committing theft and with intent to obtain or maintain control of property, he intentionally or knowingly threatens or places another in fear of imminent bodily injury or death. *See* TEX. PENAL CODE ANN. § 29.02(a)(2). The offense becomes aggravated robbery if the person uses or exhibits a deadly weapon. *Id*. § 29.03(a)(2). Brown, because he was arrested with Tran, was also charged under the law of parties doctrine. This doctrine provides that a person is criminally responsible as a party to an offense if the offense is committed by his own conduct, or by the conduct of another for which he is criminally responsible, or by both. *See id*. § 7.01. Each party to an offense may be charged with commission of the offense. Mere presence alone will not make a person a party to an offense. *Id*. A person is criminally responsible for an offense committed by the conduct of another if acting with intent to promote or assist the commission of the offense he solicits, encourages, directs, aids or attempts to aid the other person to commit the offense. *See id*. § 7.02(a)(2).

III. ANALYSIS

On appeal, Brown challenges the sufficiency of the evidence for Count One of the indictment, which alleges that Brown committed aggravated robbery against Silva:

> On or about the 30th Day of April, 2018, Steven Brown, hereinafter referred to as defendant, while in the course of committing theft of property and with intent to obtain and maintain control of said property, did intentionally and knowingly threaten and place Gabriel Silva in fear of imminent bodily injury and death, and the defendant did use and exhibit a deadly weapon, to-wit: A FIREARM.

Brown claims that, because Silva did not testify, there is insufficient evidence that Silva "was actually placed in fear or that he perceived a threat of imminent bodily injury or death during the robbery." *See id*. § 29.02(a)(2). The Texas Court of Criminal Appeals, however, has held that

> Robbery-by-placing-in-fear does not require that a defendant know that he actually places someone in fear, or know whom he actually places in fear. Rather, it requires that the defendant is aware that his conduct is reasonably certain to place someone in fear, and that someone actually is placed in fear.

Howard v. State, 333 S.W.3d 137, 140 (Tex. Crim. App. 2011); *see also Boston v. State*, 410 S.W.3d 321, 325–26 (Tex. Crim. App. 2012) (highlighting the distinction between when a robber threatens a person versus when a robber places a person in fear of imminent bodily injury or death).

Here, when Brown wore a mask and stood look-out for his partner Tran, who was brandishing a gun and demanding money from Silva, the jury could have inferred that Brown was aware that his conduct could place Silva in fear. *See Howard*, 333 S.W.3d at 140; *Boston*, 410 S.W.3d at 326 (affirming an aggravated robbery conviction even though

the convenience store clerk never saw the firearm defendant displayed); *see also* TEX. PENAL CODE ANN. § 7.02(a)(2). The evidence produced at trial supports the jury's finding that Silva was actually placed in fear, too. *See Howard*, 333 S.W.3d at 140. Hernandez testified that Silva was nervous during the robbery and acted "like he was going to cry." Hernandez recalled that Silva kept reassuring him that things would be "okay" and identified Silva in the video as "the guy who [was] grabbing his head all the time" and "pacing back and forth for about a minute." Seaton's testimony confirmed this observation. Seaton testified Silva was nervous when identifying possible suspects out of a line-up. Seaton recalled that Silva was "[j]ust kind of in shock. He was involved in an aggravated robbery." The jury was the sole judge of the credibility of Hernandez and Seaton as witnesses and of the weight to be given to their testimony. *Ramsey*, 473 S.W.3d at 808; *Wesbrook*, 29 S.W.3d at 111. Here, it appears the jury believed that Silva was placed in fear.

Although Silva refused to testify regarding any specifics of the robbery, he acknowledged under oath that he was in the robbery surveillance video.[2] The video showed Silva pacing, rubbing his face, and placing his hands on his head. The video also shows Silva opening the safe with Tran nearby, holding a firearm. Viewing the evidence in the light most favorable to the verdict, we conclude a rational fact finder could have

[2] In his brief, Brown cites *In re A.J.R.P.*, where the San Antonio Court of Appeals upheld an aggravated robbery conviction when the complainant testified that he did not perceive the defendant's behavior as "threatening" immediately before he was attacked and robbed. *See* 441 S.W.3d 733, 739 (Tex. App.—San Antonio 2014, no pet.). Brown argues that this case was incorrectly decided by our sister appellate court and urges us to reconsider this precedent. We decline this invitation. Additionally, *In re A.J.R.P.* can be distinguished from the case at hand because there, the complainant testified that he did not feel threatened, whereas here, the complainant did not testify whatsoever. *Id.*

found beyond a reasonable doubt that Silva was fearful and perceived a threat of imminent bodily injury or death. *See* TEX. PENAL CODE ANN. § 29.02(a)(2). We overrule Brown's sole issue.

IV. CONCLUSION

We affirm the trial court's judgment.

LETICIA HINOJOSA
Justice

Do not publish.
TEX. R. APP. P. 47.2(b).

Delivered and filed the
30th day of July, 2020.