



NUMBER 13-23-00199-CR

COURT OF APPEALS

THIRTEENTH DISTRICT OF TEXAS

CORPUS CHRISTI – EDINBURG

JOHN GERALD MARION,

Appellant,

v.

THE STATE OF TEXAS,

Appellee.

**ON APPEAL FROM THE 290TH DISTRICT COURT
OF BEXAR COUNTY, TEXAS**

MEMORANDUM OPINION

**Before Justices Longoria, Silva, and Peña
Memorandum Opinion by Justice Peña**

Appellant John Gerald Marion was convicted for aggravated assault with a deadly weapon, a second-degree felony, and sentenced to twenty years' imprisonment. See TEX. PENAL CODE ANN. § 22.02(a)(2). In one issue, Marion argues that there was legally

insufficient evidence that he used or exhibited a deadly weapon while committing an assault. We affirm.¹

I. BACKGROUND

In a two-count indictment, Marion was charged with aggravated assault with a deadly weapon, *id.* § 22.02(a)(2), and continuous violence against the family, *id.* § 25.11. The indictment alleged that Marion assaulted Tina Marion, his wife, on two separate occasions, once on December 10, 2020, and again on December 11, 2020. As to the aggravated assault with a deadly weapon charge, the indictment alleged that on December 11, 2020, Marion used or exhibited a firearm and “threaten[ed] imminent bodily injury” to Tina by “shooting at and in the direction of” her. Marion pleaded not guilty, and the case proceeded to trial, at which the following evidence was adduced.

On December 11, 2020, the Live Oak Police Department (L.O.P.D.) responded to an emergency call for service from Marion and Tina’s neighbor, Emma Chocolate.² In the audio recording of the 911 call admitted as an exhibit, Chocolate explained that Tina had come to her house and asked Chocolate to call the police, and that Tina was bleeding. Chocolate further explained that Tina had returned to her residence at the time of the call. Chocolate stated that Tina had told her that Marion “beat her up.”

Corporal Rebecca Bruno of the L.O.P.D. testified that she was the first officer to arrive on the scene. Upon her arrival, Tina exited the residence. Officer Bruno observed that Tina’s nose was swollen and covered with a Band-Aid. Officer Bruno also saw a

¹ This appeal was transferred from the Fourth Court of Appeals in San Antonio pursuant to an order issued by the Supreme Court of Texas. See TEX. GOV’T CODE ANN. § 73.001.

² Chocolate passed away prior to trial.

bruise on Tina's chin and blood on her clothes. Marion exited the residence with his arms raised and informed Bruno that he had two guns on his person. Officer Bruno placed Marion in handcuffs and retrieved one gun from his right front pocket, a SIG Sauer .380 pistol, and another from his back pocket, a Kimber .45 pistol. An AR-15 was subsequently discovered in the couple's bedroom. Officer Bruno inspected the house and found bullet holes on the doorframe to the bathroom and on the wall next to the bathroom. Photos of these bullet holes were admitted into evidence. Officer Bruno testified that she believed that both Marion and Tina were intoxicated at the scene.

Officer Jeremy Ruiz of the L.O.P.D. arrived second on the scene and served as the primary patrol officer. Officer Ruiz testified that Marion appeared intoxicated and had blood on his clothes and that Marion told him that the blood was not his. Officer Ruiz stated that Tina also seemed intoxicated. Marion told Officer Ruiz that Tina had shot five rounds at him and later grabbed him by the throat and genitals, at which point he needed to defend himself. Marion also told Ruiz that Tina had grabbed the AR-15 and put it in her mouth threatening to commit suicide, at which point Marion tried to stop her. Officer Ruiz testified that Marion did not report any pain and did not seek medical attention. Officer Ruiz testified that he decided to arrest Marion, and not Tina, because he did not find Marion credible. According to Officer Ruiz, he did not believe Marion because Marion did not give many details about how the fight started, and Marion told him that the encounter had gone on for about two hours.

Detective Kent Iglesias of the L.O.P.D. testified that he was called to the scene to further investigate the altercation between Marion and Tina. Detective Iglesias observed injuries on Tina's face and nose. Iglesias testified that he used a gunshot residue (GSR)

kit and swabbed the hands of both Marion and Tina. Detective Iglesias collected the gun casings found in the residence and determined that they had been fired by a .380 caliber cartridge. Detective Iglesias testified that Tina came to the police station a few days after Marion's arrest, at which point he took photos of the bruising on her face which had become darker and more visible. These photos were admitted into evidence. Detective Iglesias acknowledged that he did not test the SIG Sauer .380 pistol for fingerprints.

Ryan Christopher from the Texas Department of Public Safety (DPS) Crime Laboratory testified that he analyzed the SIG Sauer pistol and two fired .380 auto caliber cartridge casings. Christopher concluded that the casings came from the SIG Sauer pistol. Rebecca Lloyd from the DPS Crime Laboratory testified that she analyzed the results of the GSR kits and determined that there was similar GSR found on both Marion and Tina. According to a report of the GSR testing, which was admitted into evidence, the GSR found on both Marion and Tina was consistent with "a person having recently: A. Fired a weapon[;] B. Been in immediate proximity of a weapon as it is being fired[; or] C. Come into contact with a surface containing gunshot primer residue particles."

Tina testified that she and Marion would routinely begin drinking at around 9:00 a.m., but that she would "more often than not" pour her drink out and pretend to drink it. She stated that on the morning of December 11, 2020, Marion caught her pouring out the tequila he served her, and he became upset and belligerent because she was wasting good liquor that he had purchased. Tina also stated that Marion punched her face after she told him that it was her money that paid for the liquor. Tina then told Marion that if he ever hit her again, she would kill him. According to Tina, Marion then picked up a coffee pot and hit her on the head with it. Tina testified that she fell to floor as a result of the

blows, and that both her “orbital bones were broken,” her “sinuses were crushed,” and her “chin was chipped.”

After Tina fell to the floor, she got up and ran into the bathroom in the back bedroom and locked the door because Marion was “still raging.” At this point, she heard gunshots. After she heard gunshots, she heard Marion telling her to “[c]ome out,” and that he was “sorry.” Tina then left the bathroom and ran to the front door of the house, at which point Marion grabbed her, causing her to fall to the floor. Marion then proceeded to kick Tina with his steel-toed boots in the face and the ribs. With the intervention of her four dogs, Tina was able to get up and run to Chocolate’s house to call 911. Tina testified that Marion followed her and was “running over with his pistol out.” Fearing for Chocolate’s safety, Tina returned to her house. About six or seven minutes later, the police arrived.

Tina testified that she was the owner of the SIG Sauer .380 pistol. However, she also testified that she may have traded it with Marion for another gun, and that he “probably” had the SIG Sauer .380 pistol in his ankle holster on the date of the assault. Tina also testified that Marion told her that “if [she] pressed charges he’d kill [her] or have somebody kill [her].” Tina denied ever touching or hurting Marion. Tina also denied drinking that day. Tina could not recall and did not testify as to any separate assault taking place on the day before the police were called.

Anthony Davis, Tina’s son, testified that after Marion hit Tina, she called him on FaceTime. Davis stated that Tina looked “beaten up,” that she “was bloody,” and that she was “visibly upset.” Davis testified that he then saw a “hand swipe the phone,” resulting in the call ending, and that the hand did not appear to be Tina’s.

Marion testified in his own defense. According to Marion, he woke up at 3 or 4 a.m.

on December 11, 2020, and drank coffee until 10 a.m. Marion stated that after Tina woke up, they began taking shots of tequila together. Marion testified that Tina was not being truthful about them getting into a fight because she did not want to drink. Marion testified that at some point in the morning, Tina became suicidal and said that she was going to kill herself. Tina then went into another room at which point he heard gunshots and called 911. Marion promptly hung up because he had “promise[d] that [he] would never call the police [on her] or take her to the nuthouse.” Marion then heard another gunshot and went to the back bedroom at which point Tina pointed her SIG Sauer .380 pistol at him.

Tina then took her gun and was “putting it in and out of her mouth.” She then fired two quick rounds in Marion’s direction. Tina then threw the SIG Sauer .380 pistol at him, at which point he placed it in his front right pocket. Marion stated that he then took his Kimber .45 pistol from the nightstand and put it in his back pocket for “safekeeping.” Marion maintained that he then went for the AR-15 to disable it, at which point Tina tackled him, wrapped her legs around him, kicked him in the genitals, and “had a hold of [his] Adam’s apple.” Marion “thought [he] was going to pass out, and [his] only choice was to end” the altercation. “So, [he] hit her.” Marion testified that he hit Tina twice, and that he “wasn’t aiming for anything in particular.” According to Marion, he hit Tina “in self-defense.” Marion “was trying to just stop the aggression.” After the second blow, Tina “went limp,” and Marion proceeded to disable the AR-15.

Marion stated that Tina eventually got up and went to the bathroom to check on herself, and then called her son on FaceTime. Marion recalled that after the call with her son, Tina “started throwing stuff around,” including throwing the coffee pot on the floor, “smash[ing] it.” Tina then left the house to Chocolate’s house. Marion denied following

Tina out of the house or waving a pistol outside. Marion testified that when Tina returned to the house, she “flipped over the table and just took her arm and wiped the counter in the kitchen just to make it look disarrayed, like . . . there was a struggle.”

Marion acknowledged that once the police arrived, although he was in pain from his throat and genitals, he did not complain of injuries to the police. Marion further testified that Officer Ruiz was incorrect that Marion had told him that the entire altercation lasted two hours. Rather, Marion testified that the physical altercation with Tina lasted “[m]aybe a minute and a half,” with the entire incident, beginning with her firing the gun, lasting around twenty minutes.

After both sides rested, the State abandoned the continuous violence against the family count. After the parties presented closing arguments, the jury returned a guilty verdict against Marion for aggravated assault with a deadly weapon. The trial court subsequently sentenced Marion to twenty years’ imprisonment. This appeal followed.

II. STANDARD OF REVIEW & APPLICABLE LAW

“Under the Due Process Clause, a criminal conviction must be based on legally sufficient evidence.” *Harrell v. State*, 620 S.W.3d 910, 913 (Tex. Crim. App. 2021) (citing *Murray v. State*, 457 S.W.3d 446, 448 (Tex. Crim. App. 2015)). Evidence is legally sufficient if “any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.” *Joe v. State*, 663 S.W.3d 728, 731–32 (Tex. Crim. App. 2022) (citing *Jackson v. Virginia*, 443 U.S. 307, 319 (1979)). “For the evidence to be sufficient, the State need not disprove all reasonable alternative hypotheses that are inconsistent with the defendant’s guilt.” *Wise v. State*, 364 S.W.3d 900, 903 (Tex. Crim. App. 2012) (citations omitted). “Rather, a court considers only whether the inferences

necessary to establish guilt are reasonable based upon the cumulative force of all the evidence when considered in the light most favorable to the verdict.” *Id.* (citation omitted).

Under a legal sufficiency review, we view the evidence in the light most favorable to the verdict, while recognizing that “[t]he trier of fact is responsible for resolving conflicts in the testimony, weighing the evidence, and drawing reasonable inferences from basic facts to ultimate facts.” *Joe*, 663 S.W.3d at 732; *see Brooks v. State*, 323 S.W.3d 893, 899 (Tex. Crim. App. 2010) (noting that “the reviewing court is required to defer to the jury’s credibility and weight determinations”); *see also* TEX. CODE CRIM. PROC. ANN. art. 36.13 (naming the jury as “exclusive judge of the facts”). The jury, as factfinder, is “entitled to judge the credibility of witnesses, and can choose to believe all, some, or none of the testimony presented by the parties.” *Mills v. State*, 440 S.W.3d 69, 71–72 (Tex. App.—Waco 2012, pet. ref’d) (citing *Chambers v. State*, 805 S.W.2d 459, 461 (Tex. Crim. App. 1991)).

We measure the evidence produced at trial against the essential elements of the offense as defined by a hypothetically correct jury charge. *David v. State*, 663 S.W.3d 673, 678 (Tex. Crim. App. 2022) (citing *Malik v. State*, 953 S.W.2d 234, 240 (Tex. Crim. App. 1997)). “A hypothetically correct jury charge ‘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.* (quoting *Malik*, 953 S.W.2d at 240). Further, the State must prove “the statutory elements of the offense as modified by the charging instrument.” *Delarosa v. State*, 677 S.W.3d 668, 673–74 (Tex. Crim. App. 2023) (citing *Curry v. State*, 30 S.W.3d 394, 404 (Tex. Crim. App. 2000)).

A person commits aggravated assault with a deadly weapon by threat of harm if he (1) “intentionally or knowingly” (2) “threatens another with imminent bodily injury, including the person’s spouse,” and (3) “uses or exhibits a deadly weapon[.]” TEX. PENAL CODE ANN. §§ 22.01(a)(2), 22.02(a)(2). A “deadly weapon” is defined to include “a firearm or anything manifestly designed, made, or adapted for the purpose of inflicting death or serious bodily injury[.]” *Id.* §1.07(a)(17)(A).

III. DISCUSSION

To find Marion guilty, the State was required to prove beyond a reasonable doubt that he (1) “intentionally or knowingly,” (2) “threatened [Tina] with imminent bodily injury,” (3) while “us[ing] or exhibit[ing] a deadly weapon during the commission of the assault.” TEX. PENAL CODE ANN. §§ 22.01(a)(2), 22.02(a)(2). Further, the State had to prove that Marion satisfied the elements of the offense by “shooting at and in the direction of [Tina] with said deadly weapon,” as alleged in the indictment. *See Delarosa*, 677 S.W.3d at 673–74.

Although Marion acknowledges that “[t]he evidence in this case was basically he said versus she said,” he argues that the evidence is insufficient because the presence of GSR on Tina’s hands is inconsistent with her version of events and “conclusively establishes a reasonable doubt about whether [Marion] fired the weapon and whether [Marion] was actually defending himself from [Tina] discharging the weapon.” Besides the GSR found on Tina’s hands, the only evidence that Marion presented to show that it was Tina, and not Marion, who fired the weapon was Marion’s own testimony. However, it is the jury’s sole province to assess the credibility of the witnesses and their testimony, and we presume the jury reconciled any conflicts in favor of its verdict. *See Joe*, 663 S.W.3d

at 732.

The GSR evidence presented does not conclusively show that it was Tina, and not Marion, who fired the gun. At most, the evidence is equivocal. The GSR results showed that *both* Marion and Tina had “recently: A. Fired a weapon[;] B. Been in immediate proximity of a weapon as it is being fired[; or] C. Come into contact with a surface containing gunshot primer residue particles.” Lloyd confirmed on direct examination that the presence of GSR did not necessarily mean that the person fired a weapon but could also mean that the person was in close proximity to the weapon being fired, and that GSR could be transmitted if it “got on a table and then [a person] wiped [her] hand on the table.” Lloyd also stated that GSR transferred and dissipated quite easily, like chalk. The jury also heard from Detective Iglesias, who testified that the presence of GSR indicates that a person has been around a weapon, and not that he or she necessarily fired the weapon.

Considering the GSR results together with all the evidence presented at trial, a rational trier of fact could have reasonably concluded that Marion had GSR on his hands because he fired the gun at Tina, and that she had GSR on her hands because she either was in close proximity to the gun being fired, or because of transfer from surface contact. As Marion himself acknowledges, he and Tina were in close physical contact with each other *after* the firing of the SIG Sauer .380 pistol. Thus, Marion’s own version of events support an inference of GSR transfer. We are bound to defer to the factfinder’s weighing of the evidence and its drawing of reasonable inferences from the GSR evidence presented at trial. See *Wise*, 364 S.W.3d at 903; see also *Allgood v. State*, No. 04-11-00358-CR, 2012 WL 3711695, at *4 (Tex. App.—San Antonio Aug. 29, 2012, pet. ref’d) (mem. op., not designated for publication) (finding sufficient evidence of murder even

though GSR testing “revealed only small amounts of residue on [appellant’s] hands . . . compared to the greater amount of gunshot residue on the victim”); *Thompson v. State*, No. 12-01-00019-CR, 2003 WL 174097, at *6–7 (Tex. App.—Tyler Jan. 22, 2003, no pet.) (not designated for publication) (finding sufficient evidence for murder even though GSR results could not show that appellant “had fired a gun or been in close proximity to a gun which was fired” and where GSR on the victim “was consistent with her having fired a gun” because there was some evidence that appellant washed or wiped his hands after the shooting); *Valcin v. State*, No. 09-02-483 CR, 2003 WL 21766708, at *2 (Tex. App.—Beaumont July 30, 2003, no pet.) (not designated for publication) (affirming conviction where appellant did not have GSR on his hands, even though the victim did).

The jury found Tina credible and chose not to believe Marion’s version of events. See *Mills*, 440 S.W.3d at 71–72. Viewing the record in the light most favorable to the verdict, and understanding that the jury is responsible for resolving conflicts in testimony and weighing the evidence, we find that a rational trier of fact could have found all the elements of aggravated assault with a deadly weapon, as modified by the indictment, beyond a reasonable doubt. See *Joe*, 663 S.W.3d at 731–32. We overrule Marion’s sole issue.

IV. CONCLUSION

We affirm the trial court’s judgment.

L. ARON PEÑA JR.
Justice

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

Delivered and filed on the
18th day of April, 2024.