NO. 12-16-00018-CR

IN THE COURT OF APPEALS

TWELFTH COURT OF APPEALS DISTRICT

TYLER, TEXAS

DEKOVAN ALUMJUAN HALL, APPELLANT	***§***	***APPEAL FROM THE 420TH***
V.	***§***	***JUDICIAL DISTRICT COURT***
THE STATE OF TEXAS, APPELLEE	***§***	***NACOGDOCHES COUNTY, TEXAS***

MEMORANDUM OPINION

Dekovan Alumjuan Hall appeals his conviction for burglary of a habitation. In one issue, Appellant argues that the evidence is insufficient to support his conviction. We affirm.

BACKGROUND

Appellant was charged by indictment with burglary of a habitation, aggravated assault with a deadly weapon, and unlawful possession of a firearm by a felon. He pleaded "not guilty," and the matter proceeded to a jury trial.

At trial, the evidence showed that Appellant's younger sister, A.S.,[1] was involved in an altercation one evening. The next day, A.S., Appellant, and Appellant's girlfriend, Jasmine Pleasant, went to the apartment of Monica Bell, who was also involved in the altercation. Appellant entered the apartment striking his hands together and asking who attacked his sister. Bell's neighbor, Shamika Wallace, entered the apartment. She grabbed Appellant's arm and told him to come outside. Appellant did so, and Bell soon followed. Appellant told Pleasant to attack Bell. When Pleasant attempted to strike Bell, the two women began fighting in the apartment yard. Appellant retrieved a firearm and struck Bell with it in the back, head, and mouth.

[1] Because the evidence indicates that Appellant's sister is a juvenile, we use only her initials in this appeal.

Ultimately, the jury found Appellant "guilty" as charged and assessed his punishment at imprisonment for five years, fifteen years, and eight years, respectively. This appeal followed.

EVIDENTIARY SUFFICIENCY

In his sole issue, Appellant argues that the evidence is legally and factually insufficient to support his conviction for burglary of a habitation. Specifically, he argues that there is insufficient evidence that he attempted to commit or committed an assault as the underlying offense.

Standard of Review and Applicable Law

The court of criminal appeals has overruled the factual sufficiency standard of review for determining whether the evidence is sufficient to support each element of a criminal offense. *See* ***Brooks v. State***, 323 S.W.3d 893, 902, 912 (Tex. Crim. App. 2010). It has held that the ***Jackson v. Virginia***[2] standard is the only standard that a reviewing court should apply in making such a determination. *See* ***id.***

In reviewing the sufficiency of the evidence, the appellate court must determine whether, considering all the evidence in the light most favorable to the verdict, the jury was rationally justified in finding guilt beyond a reasonable doubt. ***Jackson v. Virginia***, 443 U.S. 307, 319, 99 S. Ct. 2781, 2789, 61 L. Ed. 2d 560 (1979); ***Brooks***, 323 S.W.3d at 899. Considering the evidence "in the light most favorable to the verdict" under this standard requires the reviewing court to defer to the jury's credibility and weight determinations, because the jury is the sole judge of the witnesses' credibility and the weight to be given their testimony. ***Brooks***, 323 S.W.3d at 899; *see* ***Jackson***, 443 U.S. at 319, 99 S. Ct. at 2789. A "court faced with a record of historical facts that supports conflicting inferences must presume—even if it does not affirmatively appear in the record—that the trier of fact resolved any such conflicts in favor of the prosecution, and must defer to that resolution." ***Jackson***, 443 U.S. at 326, 99 S. Ct. at 2793. Circumstantial evidence is as probative as direct evidence in establishing the guilt of an actor and can alone be sufficient to establish guilt. ***Hooper v. State***, 214 S.W.3d 9, 13 (Tex. Crim. App. 2007).

[2] 443 U.S. 307, 319, 99 S. Ct. 2781, 2789, 61 L. Ed. 2d 560 (1979).

To satisfy the elements of burglary of a habitation as alleged in the indictment, the State was required to prove that Appellant intentionally or knowingly entered a habitation, without the effective consent of Monica Bell, the owner, and attempted to commit or committed an assault against her. *See* TEX. PENAL CODE ANN. § 30.02(a) (West 2011).

Analysis

At trial, the evidence showed that Bell was at her apartment with her two-year-old son and her friend, Kawana Smith, when they heard a commotion outside. Smith testified that she heard a knock at the door. Without being told to come in, Appellant entered the apartment and began screaming, "Where those females at that jumped my sister?"[3] When asked whether Appellant was threatening, Smith responded affirmatively. Wallace entered the apartment, grabbed Appellant, and asked him to leave. Appellant went outside, and Bell followed him out to talk. "[O]ne thing led to another," and eventually, Appellant told Pleasant to "sic" Bell.

Bell testified that she was in the bathroom when she heard a commotion. She came out and spoke to Kawana about the commotion. Her apartment door suddenly swung open and Appellant walked in "hitting his hand." He stood in the kitchen hitting his hand and saying, "Where the bitches that dropped my sister? Where the hoes? Where are they?" Bell told Appellant that he needed to get out of the apartment because her child was present. Wallace entered and nudged Appellant, telling him he needed to leave because of the child. Bell told Appellant that no one attacked A.S. Appellant told Bell to come outside. Bell walked outside and tried to talk to Appellant. Appellant refused to listen and "sicced" Pleasant on Bell.

The State's theory at trial was that Appellant committed or attempted to commit assault by threat after he entered Bell's apartment. Appellant argues that there is no evidence that he intended to threaten Bell. In support of his argument, Appellant cites to evidence that Bell followed him out of the apartment, and the lack of evidence that she felt afraid or threatened. He contends that the evidence proves he went to the apartment solely to interrogate Bell about the incident with A.S.

Appellant further argues that the evidence does not show any threat of "imminent" bodily injury. He acknowledges that the evidence shows he encouraged a fight between Pleasant and Bell, but he notes that this was only after he exited the apartment. The State contends that the evidence of Appellant's words, acts, and body language inside the apartment, along with the

[3] The prosecutor asked Smith to repeat what Appellant said "minus the expletives."

evidence of the subsequent events outside the apartment, is sufficient to support a finding that Appellant committed assault by threat.

A person commits assault by threat if he intentionally or knowingly threatens another person with imminent bodily injury. TEX. PENAL CODE ANN. § 22.01(a)(2) (West Supp. 2016). Assault by threat is a conduct oriented offense. ***Landrian v. State***, 268 S.W.3d 532, 536 (Tex. Crim. App. 2008). Thus, it focuses on the act of making a threat, regardless of any result the threat causes. ***Id.*** The gist of the offense is that one acts with intent to cause a reasonable apprehension of imminent bodily injury, though not necessarily with intent to inflict such harm. ***Garrett v. State***, 619 S.W.2d 172, 174 (Tex. Crim. App. [Panel Op.] 1981). A jury may infer intent or knowledge from any facts that tend to prove their existence, including the acts, words, and conduct of the defendant. ***Manrique v. State***, 994 S.W.2d 640, 649 (Tex. Crim. App. 1999). "Imminent" has been defined as "ready to take place, near at hand, impending, hanging threateningly over one's head, [or] menacingly near." ***Henley v. State***, 493 S.W.3d 77, 89 (Tex. Crim. App. 2016). Thus, imminent bodily injury is bodily injury that is coming in the very near future. *See* ***id.***

Although there is no evidence that Appellant verbally threatened Bell inside the apartment, the evidence supports a finding that he threatened her by his conduct. The evidence shows that Appellant walked into the apartment screaming, hitting his hands, cursing, and demanding to know who attacked A.S. A rational jury could have inferred that this conduct was intended to threaten Bell with imminent bodily injury. *See* ***Manrique***, 994 S.W.2d at 649.

Even though the State did not provide direct evidence that Bell felt threatened or afraid, the jury could have reasonably inferred that Appellant intentionally or knowingly threatened her with imminent bodily injury. Bell testified that she saw her door swing open and Appellant walk in hitting his hands, cursing, and demanding to know who attacked his sister. Smith testified that she considered Appellant's conduct threatening. Regardless of Bell's actual mental or emotional reaction, the jury could have reasonably inferred that Appellant acted with intent to cause in her a reasonable apprehension of imminent bodily injury. *See* ***Landrian***, 268 S.W.3d at 536; ***Garrett***, 619 S.W.2d at 174. Therefore, a rational jury could have found that Appellant committed assault by threat inside the apartment. *See* TEX. PENAL CODE ANN. § 22.01(a)(2). Viewing the evidence in the light most favorable to the jury's verdict, we conclude that the jury was rationally justified in finding, beyond a reasonable doubt, that Appellant committed burglary

of a habitation. *See* ***Jackson***, 443 U.S. at 319, 99 S. Ct. at 2789; *see also* ***Brooks***, 323 S.W.3d at 899; TEX. PENAL CODE ANN. § 30.02(a). Accordingly, we overrule Appellant's sole issue.

DISPOSITION

Having overruled Appellant's sole issue, we ***affirm*** the trial court's judgment.

BRIAN HOYLE
Justice

Opinion delivered January 25, 2017.
Panel consisted of Worthen, C.J., Hoyle, J., and Neeley, J.

(DO NOT PUBLISH)

COURT OF APPEALS

TWELFTH COURT OF APPEALS DISTRICT OF TEXAS

JUDGMENT

JANUARY 25, 2017

NO. 12-16-00018-CR

DEKOVAN ALUMJUAN HALL,
Appellant
V.
THE STATE OF TEXAS,
Appellee

Appeal from the 420th Judicial District Court
of Nacogdoches County, Texas (Tr.Ct.No. F1522133)

THIS CAUSE came to be heard on the appellate record and briefs filed herein, and the same being considered, it is the opinion of this court that there was no error in the judgment.

It is therefore ORDERED, ADJUDGED and DECREED that the judgment of the court below **be in all things affirmed**, and that this decision be certified to the court below for observance.

Brian Hoyle, Justice.
Panel consisted of Worthen, C.J., Hoyle, J., and Neeley, J.