Affirmed and Opinion filed October 28, 1999.

In The

Fourteenth Court of Appeals

NO. 14-97-01200-CR

WILLIE JAMES JOHNSON, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the 56th District Court
Galveston County, Texas
Trial Court Cause No. 96-CR0947

O P I N I O N

Appellant was charged with the felony offense of retaliation enhanced by two prior felony convictions. The jury found appellant guilty and the trial court assessed punishment at 25 years incarceration in the Texas Department of Criminal Justice--Institutional Division. Appellant claims the evidence is legally and factually insufficient to support his conviction. We affirm.

In 1996, the State prosecuted Dinell King ("King") for murder. King and two others were charged with the beating death of a woman in Texas City. Clifton Jones ("Jones"), the complainant in this case, testified for the State against King and the others. King was found guilty. Joel Bennett, assistant district

attorney for Galveston County, testified that Jones' testimony was, in part, responsible in obtaining all three verdicts.

According to Jones, the following day after he testified against King, he saw appellant, King's father. Appellant asked Jones why he had "snitched" on his son. When Jones denied "snitching" on King, appellant struck Jones in the back of the head with a .380 handgun and then punched him in the jaw. Appellant had also approached Jones the day before his testimony. Appellant inquired if Jones was going to testify.

After the incident, Jones contacted assistant district attorney Bennett and told him appellant had struck him in the head with the butt of a gun. Bennett conveyed this information to Detective Trahan of the Texas City Police Department, and authorized the filing of a charge of retaliation against appellant. Officer Steve Presely of the Texas City Police Department testified he was making a bar check at the Low Key Lounge when he was approached by appellant who began telling him about problems he was having with Jones. Appellant told the officer he had hit Jones "upside the head a couple of times" last "Tuesday or Wednesday." Officer Jess Caldwell of the Texas City Police Department arrested appellant on a warrant after he had turned himself in at the police station. At the police station, Officer Caldwell overheard appellant tell his wife to "go find Clifton and have him get ahold [sic] of the D.A.'s office and drop the charges."

At trial, it was undisputed that appellant struck Jones. Jones testified that being struck hurt "a little bit." On cross-examination, Jones admitted he had stated he was not harmed by appellant in a phone conversation with appellant's defense attorney. Jones explained the statement was made because appellant's people were around. Jones maintained that the last time he told somebody about the incident, someone took a shot at him.

After the State rested, appellant called several witnesses to testify on his behalf. Bobby Horton and Patricia Anna Serenial testified Jones told them "[the fight] didn't really happen." Another witness, Judy Johnson, claimed she had seen Jones and appellant on May

24, 1996 "arguing and subsequently fighting." According to Ms. Johnson, "it wasn't a fight...[appellant] just passed a lick and that was it." Appellant testified on his own behalf and admitted he struck Jones, though he denied it was with a gun. Appellant also contended the altercation ensued over $100 appellant believed Jones owed him for a prior drug transaction between the two, not because Jones testified against his son.

In two points of error, appellant contends: (1) the evidence was legally insufficient to support conviction because the element of *harm* was not proven; and (2) the evidence was factually insufficient to show that appellant struck Jones in retaliation.[1]

The standard for reviewing the legal sufficiency of the evidence is "whether, after reviewing the evidence in the light most favorable to the prosecution, 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, 309 (1979); *see Richardson v. State*, 879 S.W.2d 874, 879 (Tex. Crim. App. 1993). The jury is the exclusive judge of the credibility of the witnesses and the weight to be given to their testimony. *See Jones v. State*, 944 S.W.2d 642, 647 (Tex. Crim. App. 1996) Reconciliation of conflicts in the evidence is within the exclusive province of the jury. *See Losada v. State*, 721 S.W.2d 305, 309 (Tex. Crim. App.1986). The standard of review on appeal is the same for both direct and circumstantial evidence. *See Belyeu v. State*, 791 S.W.2d 66, 68 (Tex. Crim. App. 1989).

In reviewing this case in the light most favorable to the verdict, the evidence is legally sufficient to establish appellant committed the crime of retaliation.[2] In this case, appellant contends there was insufficient

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[1] Although appellant's points of error are inconsistently worded throughout his brief, it is apparent, upon closer inspection, that appellant contests the *legal* sufficiency of the evidence on the element of harm, and the *factual* sufficiency of the evidence on the element of retaliation.

[2] A person commits an offense if he intentionally or knowingly harms or threatens to harm another by an unlawful act: (1) In retaliation for or on account of the service or status of another as (a) public servant (b) person who has reported or who the actor knows intends to report the occurrence of a crime; or (2) to prevent or delay the service of another as: public servant, witness, prospective witness, or informant; or (b) person who has reported or who the actor knows intends to report the occurrence of a crime. *See* TEX. PEN. CODE ANN. § 36.06 (Vernon Supp. 1999).

evidence to establish the element of harm in the present case. The term "harm," is defined as "anything reasonably regarded as loss, disadvantage, or *injury*." TEX. PEN. CODE ANN § 1.07(a)(25) (Vernon 1994). One type of *injury* is that of bodily injury. The term "bodily injury," according to the Texas Penal Code, means "*physical pain*, illness, or any impairment of physical condition." TEX. PEN. CODE ANN § 1.07(a)(8) (Vernon 1994) (emphasis added). These definitions are broad enough to "encompass even minor physical contacts as long as they constitute more than offensive touching." *Lane v. State*, 763 S.W.2d 785, 786 (Tex. Crim. App. 1989); *York v. State*, 833 S.W.2d 734, 736 (Tex. App.–Fort Worth 1992, no pet.).

Appellant contends the only physical contact was one that only hurt "a little bit," and as such, the blow amounted to nothing more than offensive touching. Appellant's argument is one of degree, not kind. Here, the victim testified that it *hurt* when he was struck by appellant. Appellant's focus on the words "a little bit" is misplaced. The law makes no distinction between the subjective degrees of pain necessary to establish that there has been bodily injury or harm. The law simply requires the State to establish the victim endured a "*physical pain*" or "*injury*." *See* TEX. PEN. CODE ANN § 1.07(a)(8) (Vernon 1994); TEX. PEN. CODE ANN § 1.07(a)(25) (Vernon 1994). After reviewing the evidence in the light most favorable to the verdict, we hold that a rational juror could have concluded, beyond a reasonable doubt, that Jones suffered harm as a result of being struck by appellant. We find the State's evidence is legally sufficient to support appellant's conviction under the *Jackson* standard. *See generally Jackson*, 443 U.S. at 307; *Richard*, 879 S.W.2d at 879. Accordingly, we overrule appellant's first issue.

In his second issue, appellant claims the evidence is factually insufficient to show that he struck Jones in retaliation for testifying against his son. The appropriate balance between the jury's role as the judge of facts and the reviewing court's duty to review criminal convictions is struck by not allowing the appellate court to "find" facts or substitute its judgment for that of the jury; but rather to reverse the verdict *only* "when it determines that the verdict is against the great weight of the evidence presented at trial so as to be *clearly wrong and unjust*." *Clewis v. State*, 922 S.W.2d 126, 135 (Tex. Crim. App. 1996) (emphasis added).

In a factual sufficiency review, the appellate court considers all of the evidence in the record related to appellant's sufficiency challenge, not just the evidence which supports the verdict. *See Jones*, 944 S.W.2d at 647. Additionally, a factual sufficiency review must be appropriately deferential to the jury's findings. *See Clewis*, 922 S.W.2d at 133.

It is undisputed that appellant struck Jones. The question is whether the evidence was factually sufficient to support the jury's verdict that appellant hit Jones in retaliation for his testimony against appellant's son. There is evidence in the record that appellant's intention, in striking Jones, was retaliation for Jones' testimony against his son. Conversely, appellant claims the blow to Jones was the result of an altercation over money owed to him for marijuana sold to Jones on credit.

In a case with two distinctly different versions of events, it is the jury's role to judge the credibility of the witnesses and the weight to be given their testimony. *See Losada*, 721 S.W.2d at 309. The jury may resolve or reconcile conflicts in the testimony, accepting or rejecting such portions of the testimony as the jury sees fit. *See id.; Driggers v. State*, 940 S.W.2d 699, 704 (Tex. App.–Texarkana 1996, pet. ref'd). The jury is the sole trier of fact and may judge the credibility of witnesses, reconcile conflict in testimony, and accept or reject any evidence presented by either side of the case. *See Chambers v. State*, 805 S.W.2d 459, 461 (Tex. Crim. App. 1991); *Bath v. State*, 951 S.W.2d 11, 14 (Tex. App.–Corpus Christi 1997, pet. ref'd), *cert. denied*, 119 S.Ct. 80, 142 L.Ed.2d 62 (1998); *Garza v. State*, 937 S.W.2d 569, 570 (Tex. App.–San Antonio 1996, pet ref'd).

The jury, as the fact finder, was entitled to believe Jones' rendition of events and did so by finding appellant guilty. There is sufficient evidence in this case to establish that the verdict of the jury is not contrary to the overwhelming weight of evidence presented at trial so as to be clearly wrong and unjust. *See Clewis*, 922 S.W.2d at 135.

In conclusion, we find appellant's contentions of legal and factual insufficiency of the evidence to be unpersuasive. The record clearly supports the jury's verdict. Accordingly, we overrule appellant's two points of error.

We affirm the trial court's judgment.

/s/ Don Wittig
Justice

Judgment rendered and Opinion filed October 28, 1999.

Panel consists of Justices Amidei, Edelman and Wittig.

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