



COURT OF APPEALS
EIGHTH DISTRICT OF TEXAS
EL PASO, TEXAS

HENRY DOLLY, JR.	§	No. 08-19-00171-CR
Appellant,	§	Appeal from the
v.	§	238th District Court
THE STATE OF TEXAS,	§	of Midland County, Texas
Appellee.	§	(TC# CR51927)

OPINION

A jury convicted Henry Dolly, Jr., Appellant here, of sexual assault. TEX.PENAL CODE ANN. § 22.011(a)(1). In accordance with the jury's findings, he was sentenced to life imprisonment. On appeal, Appellant complains that the State failed to present sufficient evidence to support his guilt. Finding that the State produced sufficient evidence to support the verdict, we affirm the conviction below.

I. BACKGROUND

A. Factual Background

Appellant and E.H.¹ have known each other since 1979 or 1980. They have a child together, a son with special needs. On April 27, 2018, they were living together, but were not in a sexual relationship. That evening, in response to Appellant's sexual advances, E.H. told him:

¹ For privacy reasons, we will refer to the victim by the initials E.H.

(1) to “quit;” (2) to “stop;” (3) “no;” and (4) “I don’t want to sleep with you.” Although E.H. struggled, even attempting to choke Appellant with the cord from her oxygen tank, he continued the assault until he completed the sexual act. Afterwards, E.H. accused Appellant of raping her, and he slapped her.

Rather than reporting the assault to the police, E.H. reported the incident to the rape crisis center. Shortly thereafter, she confronted Appellant about the incident. She recorded that conversation, in which Appellant admitted to having sex with her despite her protests.

B. Procedural History

On July 19, 2018, the State charged Appellant with sexual assault. At trial, the jury found Appellant guilty. Because of Appellant’s prior felony history, the trial court sentenced Appellant to life in prison. Appellant challenges the sufficiency of the evidence to support his conviction, focusing largely on the issue of consent.

II. STANDARD OF REVIEW

The Fourteenth Amendment’s guarantee of due process requires that every conviction must be supported by legally sufficient evidence. *See Jackson v. Virginia*, 443 U.S. 307, 315-16 (1979); *Brooks v. State*, 323 S.W.3d 893, 917 (Tex.Crim.App. 2010). In a legal sufficiency challenge, we focus solely on whether the evidence, when viewed in the light most favorable to the verdict, would permit *any* rational jury to find the essential elements of the offense beyond a reasonable doubt. *Jackson*, 443 U.S. at 318-19; *Brooks*, 323 S.W.3d at 912 (establishing legal insufficiency under *Jackson v. Virginia* as the only standard for review of the evidence).

Applying that standard, we recognize that our system designates the jury as the sole arbiter of the credibility and the weight attached to the testimony of each witness. *Metcalf v. State*, 597 S.W.3d 847, 855 (Tex.Crim.App. 2020); *Dobbs v. State*, 434 S.W.3d 166, 170 (Tex.Crim.App.

2014). Only the jury acts “to resolve conflicts in the testimony, to weigh the evidence, and to draw reasonable inferences from basic facts to ultimate facts.” *Clayton v. State*, 235 S.W.3d 772, 778 (Tex.Crim.App. 2007), *quoting Jackson*, 443 U.S. at 319. In doing so, the jury may choose to believe or disbelieve that testimony. *Lancon v. State*, 253 S.W.3d 699, 707 (Tex.Crim.App. 2008). The jury remains at liberty to believe “all, some, or none of a witness’s testimony.” *Metcalf*, 597 S.W.3d at 855. When the record supports conflicting inferences, we presume that the jury resolved the conflicts in favor of the verdict, and we defer to that determination. *Dobbs*, 434 S.W.3d at 170; *see also Jackson*, 443 U.S. at 319.

We remain mindful that “[t]here is no higher burden of proof in any trial, criminal or civil, and there is no higher standard of appellate review than the standard mandated by *Jackson*.” *Brooks*, 323 S.W.3d at 917 (Cochran, J., concurring). However, “[w]e are not to sit as a thirteenth juror reweighing the evidence or deciding whether we believe the evidence established the element in contention beyond a reasonable doubt[.]” *Blankenship v. State*, 780 S.W.2d 198, 207 (Tex.Crim.App. 1988) (en banc). Instead, “we test the evidence to see if it is at least conclusive enough for a reasonable factfinder to believe based on the evidence that the element is established beyond a reasonable doubt.” *Id.*, *citing Jackson*, 443 U.S. at 318.

III. DISCUSSION

Under the Texas Penal Code, a person commits the offense of sexual assault if he intentionally or knowingly causes the penetration of the anus or sexual organ of another person by any means without that person’s consent. TEX.PENAL CODE ANN. § 22.011(a)(1). Thus, the State bore the burden of establishing each element of the offense, including the lack of consent beyond a reasonable doubt. *Brooks*, 323 S.W.3d at 917. We have outlined the evidence of the assault above.

In response to the State's evidence of assault, Appellant raises a number of purported inconsistencies: (1) E.H. and Appellant slept in the same bed; (2) E.H. did not report the incident to the police for several weeks; (3) E.H. did not wish to press charges, nor did she give a witness statement to the police; (4) no physical evidence corroborated her allegations; (5) although E.H. testified that she wrapped her oxygen cord around Appellant's neck, the State presented no photographs or other evidence to substantiate this claim. Appellant also points the Court to alleged inconsistencies in the descriptions of E.H.'s demeanor when she reported the incident. He further claims E.H. had a motive to lie because of Appellant's infidelity and her desire to get him out of the home.

Each of these arguments goes to the credibility of the victim here. A jury *could* have found any of them, or their combined weight, persuasive. This jury, however, did not, and the Court must not substitute its judgment for the jury's on issues of credibility. *Blankenship*, 780 S.W.2d at 207. As set forth above, the jury alone weighs the credibility and determines the weight attached to the testimony of each witness. *Metcalfe*, 597 S.W.3d at 855. Here, they determined that E.H. was credible, and we find no reason to disregard that conclusion.

IV. CONCLUSION

For the reasons noted, the conviction below is affirmed.

JEFF ALLEY, Chief Justice

June 24, 2020

Before Alley, C.J., Rodriguez, and Palafox, JJ.

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