Affirmed and Opinion filed October 7, 1999.

In The

Fourteenth Court of Appeals

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NO. 14-97-01378-CR

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ALFREDO JORGE GUERRERO, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the 230th District Court
Harris County, Texas
Trial Court Cause No. 760,686

O P I N I O N

Alfredo Jorge Guerrero appeals his conviction for injury to an elderly individual. The jury assessed his punishment at 35 years imprisonment. In three issues, appellant contends that the evidence is legally and factually insufficient to show appellant caused serious bodily injury to the victim, and the trial court erred in refusing to admit into evidence appellant's testimony to the grand jury. We affirm.

Appellant came to Pasadena to live with his sister and father two years prior to the offense. Prior to this, appellant had lived away from his sister and father for a period of thirty years. On February 24,1997, appellant called 911 for an ambulance, reporting that his father, Alberto R. Guerrero (victim), 87 years of age, apparently had a stroke. The paramedics arrived at the victim's home, and found the dead victim laying on his back in bed. The paramedics observed severe bruises on the body of the victim. Shaking and sweating profusely, appellant told the paramedics that his father had fallen two days earlier. Officer Rogge (Rogge) was called by the paramedics to investigate the incident. In response to Rogge's questions, appellant stated his father incurred his bruises in several falls during the past two weeks. Appellant's sister went to work Laredo on February17, 1997, leaving appellant alone in the house with his father for a week before the incident.

Rogge called his supervisor for further assistance, and detectives Dalton and Webb came to the victim's house. Appellant told the detectives that his father had fallen over the corner of the couch in the living room, hitting a coffee table, three or four days earlier. After his father fell this first time, appellant stated his father fell against a wall in the bathroom two or three days earlier. After this second fall, appellant told the officers his father fell over a desk in the bedroom a "couple" days earlier.

After appellant gave them this explanation, Detective Dalton told appellant to wait in a bedroom with Officer Rogge while he continued his investigation. Shortly thereafter, appellant left the bedroom, and went to the garage to wash some clothes. Rogge told appellant to stop, and Dalton and Webb came to the garage and observed several pieces of bloody clothing. Although his father was dead, appellant said his clothing belonged to his father and needed washing.

Appellant later gave the detectives a written statement that was inconsistent with his prior oral statements concerning his father's falls in the house. In his written statement, appellant said his father first fell in the bedroom on a desk, and then fell again the same day in

the bathroom. Thereafter, appellant said his father fell in the living room. In his oral statement to the detectives, the first fall occurred in the living room, the second fall occurred in the bathroom at least one day after the first fall, and the third fall occurred in the bedroom, either on the same day as the bathroom fall or a day later.

The medical examiner (ME) testified that the victim had ten right-rib fractures, injuries to his right lung, and numerous injuries between his scalp and skull. The ME stated the victim suffered serious bodily injuries to the chest from some blunt object that caused his death. Specifically, the ME stated that the victim's ten broken ribs damaged his right lung, which filled with fluid causing respiratory failure and death. The ME further stated the injuries were probably caused by a person's fist, and were not consistent with the victim having fallen and hitting a desk, commode, or the edge of a table.

Appellant testified that he got up around 7:00 a.m., and gave his father medicine. After giving his father additional medicine 45 minutes later, he prepared his father's breakfast. At about 9:00 a.m., appellant returned to his father's room and observed his father having difficulty breathing. He testified that he then called the doctor's office, but the line was busy, so he called his sister in Laredo at 9:31 a.m. After that, he testified he called the doctor's office again and the doctor's secretary told him to call 911. Appellant called 911 and told the operator that he thought his father was having a stroke. He testified that he did not injure his father, and that they had a loving relationship.

Appellant had several character witnesses testify in his behalf. Appellant's brother, Jorge Luis Guerrero, testified that he saw his father fall in 1996. Appellant's sister, Dr. Carmen Schweyer, testified that appellant and their father had a good relationship. Dr. Schweyer testified that the family had a hereditary blood vessel problem and that her father bruised easily, but he was never violent. She further stated she had been gone from her house a week before the incident. Other friends of the family testified that appellant was nice to his family. A pathologist, Dr. Paul Radelat, testified that he reviewed the autopsy report, but never

saw the victim's body and did not perform any independent tests on the body. He opined that 50 blows with a fist could cause such bruises, but falls and other things could cause such bruises also. He testified that the injuries on the backs of the decedent's hands could be consistent with someone trying to cover up, and their hands being struck by a blunt object..

In his first two issues, appellant contends the evidence is legally and factually insufficient to show that appellant caused his father's serious bodily injuries. Appellant argues that there was no evidence to show that he ever raised a hand against his father.

In reviewing the legal sufficiency of the evidence, we consider all the evidence, both State and defense, in the light most favorable to the verdict. *Houston v. State,* 663 S.W.2d 455, 456 (Tex. Crim. App. 1984); *Garrett v. State*, 851 S.W.2d 853, 857 (Tex. Crim. App. 1993). In reviewing the sufficiency of the evidence in the light most favorable to the verdict or judgment, the appellate court is to determine whether any rational trier of fact could have found the essential elements of the offense beyond a reasonable doubt. *Jackson v. Virginia*, 443 U.S. 307, 318-19 (1979); *Ransom v. State*, 789 S.W.2d 572, 577 (Tex. Crim. App. 1989), *cert. denied*, 110 S.Ct. 3255 (1990). This standard is applied to both direct and circumstantial evidence cases. *Chambers v. State*, 711 S.W.2d 240, 245 (Tex. Crim. App. 1986). The jury is the exclusive judge of the facts, credibility of the witnesses, and the weight to be given to the evidence. *Chambers v. State*, 805 S.W.2d 459, 462 (Tex. Crim. App. 1991). In conducting this review, the appellate court is not to re-evaluate the weight and credibility of the evidence, but act only to ensure the jury reached a rational decision. *Muniz v. State*, 851 S.W.2d 238, 246 (Tex. Crim. App. 1993); *Moreno v. State*, 755 S.W.2d 866, 867 (Tex. Crim. App. 1988). In making this determination, the jury can infer knowledge and intent from the acts, words, and conduct of the accused. *Dues v. State*, 634 S.W.2d 304, 305 (Tex. Crim. App. 1982).

Under *Clewis v. State*, 922 S.W.2d 126, 133 (Tex. Crim. App. 1996), a court of appeals reviews the factual sufficiency of the evidence when properly raised after a determination that

the evidence is legally sufficient. *Id*. In conducting a factual sufficiency review, the court of appeals views all the evidence without the prism of "in the light most favorable to the prosecution" and sets aside the verdict only if it is so contrary to the overwhelming weight of the evidence as to be clearly wrong and unjust. *Id.* In conducting a factual sufficiency review, the court of appeals reviews the fact finder's weighing of the evidence and is authorized to disagree with the fact finder's determination. This review, however, must be appropriately deferential so as to avoid an appellate court's substituting its judgment for that of the jury. If the court of appeals reverses on factual sufficiency grounds, it must detail the evidence relevant to the issue in consideration and clearly state why the jury's finding is factually insufficient. The appropriate remedy on reversal is a remand for a new trial. *Id.*

A factual sufficiency review must be appropriately deferential so as to avoid the appellate court's substituting its own judgment for that of the fact finder. *Santellan v. State*, 939 S.W.2d 155, 164 (Tex. Crim. App. 1997). This court's evaluation should not substantially intrude upon the fact finder's role as the sole judge of the weight and credibility of witness testimony. *Id*. The appellate court maintains this deference to the fact findings, by finding fault only when "the verdict is against the great weight of the evidence presented at trial so as to be clearly wrong and unjust." *Id.*

In this case, the evidence most favorable to the verdict was: (1) appellant appeared nervous and was sweating profusely when the paramedics arrived; (2) appellant's initial oral statement to the detectives concerning his father's falls was inconsistent with his later written statement to the police; (3) he attempted to wash his father's bloody clothing, but was stopped by the officers before he could do so; (4) the ME testified the victim suffered serious bodily injuries about the upper part of his body that were consistent to the victim having been struck numerous times with a blunt object, including a fist; (5) the ME stated the victim's injuries were not consistent with having fallen and hitting a commode, a desk, or the edge of a table; and (6) appellant had been alone with his father for a week before his death.

The evidence was circumstantial and depended upon the jury's assessment of the credibility of the witnesses, and the weight to be given their testimony. *Chambers v. State*, 805 S.W.2d 459, 461(Tex.Crim.App.1991). In this case, the jury chose to disbelieve appellant's version of how his father was injured. The jury believed that the victim had been brutally beaten, that the falls did not cause these multiple serious bodily injuries, and that appellant was the only one that could have injured his father. The fact that appellant attempted to hide the bloody clothing of his father was most damaging and would "indicate an attempt to conceal incriminating evidence and to elude officers." *Graham v. State*, 566 S.W.2d941, 951 (Tex.Crim.App.1978). Such conduct can indicate knowledge of wrongful conduct. *Id*. We find that a rational jury could have found beyond a reasonable doubt that appellant was guilty of injury to an elderly individual. We overrule appellant's contention in issue one that the evidence was legally insufficient to sustain his conviction.

Appellant further contends the same evidence is factually insufficient under *Clewis* to show that he caused his father's injuries. The testimony of the ME indicated that the victim's death was caused by a blunt object, and that falls as described by appellant would not have caused such serious injuries. Although appellant insisted that he did not injure his father, the circumstantial evidence we have set out above indicated otherwise. Appellant was alone with his father, and had the opportunity to beat him. His attempt to conceal the bloody clothes and get them in the washer before the police officers could look at them indicates a guilty conscience. Also, inconsistent stories of how and when his father fell indicate lack of credibility. The fact that appellant was sweating profusely and appeared nervous to the police indicates a guilty conscience. What weight to give contradictory testimonial evidence is within the sole province of the trier of the fact, because it turns on an evaluation of credibility and demeanor. *Cain v. State*, 958 S.W.2d 404, 408-09 (Tex.Crim.App.1997). Accordingly, we must show deference to the jury's findings. *Id*. at 409. A decision is not manifestly unjust merely because the jury resolved conflicting views of the evidence in favor of the State. *Id.* at 410. In performing a factual sufficiency review, the courts of appeals are required to give

deference to the jury verdict, examine *all* of the evidence impartially, and set aside the jury verdict "only if it is so contrary to the overwhelming weight of the evidence as to be clearly wrong and unjust." *Cain*, 958 S.W.2d at 410; *Clewis*, 922 S.W.2d at 129. After reviewing the record, we conclude the jury's finding that appellant did injure his father causing serious bodily injury is not so contrary to the overwhelming weight of the evidence as to be clearly wrong and unjust. We overrule appellants contention in issue two that the evidence was factually insufficient to show he caused injury to his father.

In issue three, appellant contends the trial court erred in refusing to admit appellant's grand jury testimony under the rule of optional completeness. TEX. R. EVID. 107. The State questioned the grand jury foreperson, Kay Pizzatola, about the allegation in the indictment stating appellant used a deadly weapon "namely a blunt object unknown to the Grand Jury during the commission of the offense." Ms. Pizzatola answered that they were unable to determine what type of weapon was used to injure the victim, other than it was a blunt object. Rule 107, Texas Rules of Evidence, provides, in pertinent part:

> When a part of an act, declaration, conversation, writing or recorded statement is given in evidence by one party, the whole on the same subject may be inquired into by the other. . . .

TEX. R. EVID. 107.

At no time was any part of appellant's grand jury testimony read to the jury. The rule is not implicated until such time as party attempts to have a portion of the statement "given in evidence." *Washington v. State*, 856 S.W.2d 184, 186 (Tex.Crim.App.1993). Because no part of appellant's grand jury testimony was "given in evidence" by the State, there was no justification under rule 107 for allowing introduction of the entire matter. *Id.* Appellant's contention under issue three that the trial court erred in refusing to admit appellant's grand jury testimony is overruled, and the judgment of the trial court is affirmed.

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Bill Cannon
Justice

Judgment rendered and Opinion filed October 7, 1999.

Panel consists of Justices Sears, Cannon, and Lee.[1]

Do Not Publish — TEX. R. APP. P. 47.3(b).

[1] Senior Justices Ross A. Sears, Bill Cannon, and Norman R. Lee sitting by assignment.