Affirmed and Opinion filed December 9, 1999.

In The

Fourteenth Court of Appeals

———————————

NO. 14-97-01419-CR

———————————

LARRY SIMMONS, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the 339th District Court
Harris County, Texas
Trial Court Cause No. 758,679

O P I N I O N

This is an appeal from a conviction for the offense of aggravated assault. TEX. PEN. CODE ANN. § 22.02 (Vernon 1994). A jury found appellant guilty and the trial court assessed punishment, enhanced by two prior felony convictions, at confinement for thirty years. In two points of error, appellant argues that the evidence was factually insufficient to support his conviction and that the trial court abused its discretion in denying his request for a hearing on his motion for new trial. We affirm.

In his second point of error, appellant complains that the evidence is factually insufficient to support his conviction.

When reviewing a factual sufficiency point, all evidence must be viewed without the prism of "in the light most favorable to the prosecution" and we reverse only if the verdict is so contrary to the overwhelming weight of the evidence as to be clearly wrong and unjust. *Clewis v. State*, 922 S.W.2d 126, 129 (Tex. Crim. App. 1996). We should be appropriately deferential to avoid substituting our judgment for that of the jury. *Id*. at 133.

The record reflects that on July 21, 1997, appellant was fired from his job at a drum reconditioning business. The owner of the business, Selroy Tillman, needed to release some of his employees. Tillman asked Burrell Thomas, the foreperson, which employees were not working. Thomas suggested that appellant should be fired, because he made mistakes and came to work with liquor on his breath. When Thomas told appellant that he was fired, appellant became very upset.

Tillman and Thomas testified that appellant made threats toward Thomas. Appellant was warned off the property and eventually left. Appellant came back to the property around noon, and then again, at 4:30 p.m. Thomas testified that he saw appellant talking to another employee named Scott. Thomas said that when appellant saw him, appellant pulled a pocket knife out of his back pocket, and charged toward him. Thomas grabbed a metal pipe and told appellant to stop. Appellant stopped, grabbed a mop handle, and continued toward Thomas. Thomas testified that appellant still had the knife, but was not sure if he dropped it during the fight. The two exchanged blows. Thomas knocked appellant to the ground.

Scott testified that appellant had been drinking and became wild after he lost his job. Scott said he did not hear appellant make any threats and only saw Thomas and appellant "swinging sticks" at each other. Another employee, David Koch, testified that appellant made threats to Thomas and charged at him with a pocket knife.

To commit the crime of aggravated assault, the State must prove that appellant intentionally or knowingly threatened Thomas with imminent bodily injury and used or exhibited a deadly weapon during the commission of the assault. See TEX. PEN. CODE ANN. § 22.02 (Vernon 1994). After considering all of the evidence, we hold that the evidence is factually sufficient to support the conviction. Appellant's second point of error is overruled.

In his first point of error, appellant complains that the trial court abused its discretion by not holding a hearing on appellant's motion for new trial. Specifically, appellant argues that his trial counsel was ineffective because appellant was not called to testify.

The right to a hearing on a motion for new trial is not an absolute right. *Reyes v. State*, 849 S.W.2d 812, 815 (Tex.Crim.App.1993). We review a trial court's decision to not set a hearing under an abuse of discretion standard. *Id*. A trial court abuses its discretion if it fails to hold a hearing on a motion for new trial that raises matters which are not determinable from the record. *Jordan v. State*, 883 S.W.2d 664, 665 (Tex.Crim.App.1994); *Reyes*, 849 S.W.2d at 816. As a prerequisite to a hearing, and as a matter of pleading, motions for new trial must be supported by an affidavit of either the accused or someone else specifically showing the truth of the grounds asserted. *Jordan*, 883 S.W.2d at 665; *Reyes*, 849 S.W.2d at 816. The affidavit does not have to reflect every component legally required to establish relief, but the motion for new trial or affidavit must reflect that reasonable grounds exist for holding that such relief could be granted. *Jordan*, 883 S.W.2d at 665; *Reyes*, 849 S.W.2d at 816.

Appellant's affidavit stated, in pertinent part:

> . . . I demand an opportunity to testify. It is clear from the questions raised by the jury during its deliberations that my testimony would have provided evidence for the jury to have considered that would have exonerated me and resulted my acqui[t]tal."

The jury asked one question during deliberations. They asked to see the testimony of David Koch and whether Koch saw appellant with a pocket knife. The trial court provided the jury with the relevant testimony.

Appellant's affidavit did not show reasonable grounds that would entitle him to a hearing on the motion. *Jordan*, 883 S.W.2d at 665. Appellant did not claim that his counsel was ineffective or deficient. He did not state whether it was his decision or that of counsel's not to testify. The record did not support the contention that his testimony would have answered the jury's question. Appellant did not state how the evidence would have changed if he had testified. Under these circumstances, appellant's motion for new trial did not provide sufficient grounds to believe that his counsel's representation may have been ineffective and thereby entitle appellant to a hearing on the motion. Appellant's first point of error is overruled.

We affirm the judgment.

Joe L. Draughn
Justice

Judgment rendered and Opinion filed December 9, 1999.

Panel consists of Justices Draughn, Lee, and Hutson-Dunn.*

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

* Senior Justices Joe L. Draughn, Norman Lee, and D. Camille Hutson-Dunn sitting by assignment.