



In The
Court of Appeals
Fifth District of Texas at Dallas

No. 05-10-00677-CR

JEFFREY ALLEN OTTO, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the 265th Judicial District Court
Dallas County, Texas
Trial Court Cause No. F07-20871-R

MEMORANDUM OPINION

Before Justices Moseley, Lang-Miers, and Murphy
Opinion By Justice Lang-Miers

Jeffrey Allen Otto appeals his conviction of aggravated assault on a public servant. Appellant waived his right to a jury trial and pleaded not guilty. After a nonjury trial, the trial court found appellant guilty and assessed his punishment, enhanced by a prior felony conviction, at twenty years of imprisonment. In two issues on appeal, appellant argues that the evidence was insufficient to prove that the public servant suffered bodily injury or that appellant caused bodily injury. Because all dispositive issues are settled in law, we issue this memorandum opinion. TEX. R. APP. P. 47.2(a), 47.4. We resolve appellant's issues against him and affirm the trial court's judgment.

BACKGROUND

Timothy Redhair, a patrol officer with the City of Duncanville police department, testified for the State that, while he was on patrol in uniform and in a marked police squad car, he observed a sports utility vehicle in front of him. The SUV caught his attention because it had a dangling license plate light, damage on its left side, and a wobbly tire. As Redhair got behind the SUV, it “drastically reduced its speed[.]” A computer search Redhair ran on the SUV’s license plate number did not yield anything significant. Redhair continued to follow the SUV, and then turned on his overhead lights to initiate a traffic stop. The SUV drove for a short time more, and then stopped in the middle of the street. Redhair stated that there was nothing obstructing the SUV from going forward. Redhair testified:

[T]hen as I’m calling the traffic stop in I see the reverse lights come on in the SUV and it just comes flying back at me. I can hear the wheels squeaking on the pavement, and the engine running, and just, you know, big bang as it comes up on the top of the hood of my car.

....

Panic. I threw the microphone down, went to try to go get out, ended up having to kick the door open. As I’m getting out of the squad car I can still hear the engine revving, I can still hear the tires spinning. They’re now up, you know, its rear wheels now spinning up on top of the squad [car].

Redhair testified that he drew his weapon, and approached the driver’s side of the SUV. He commanded appellant, who was the driver, to put his hands up. Appellant crawled over a person in the passenger seat to get out of the SUV. Redhair chased appellant while appellant repeatedly yelled, “Don’t shoot me.” Redhair testified that he repeatedly told appellant to stop and that he pulled out his taser. Appellant then ran between some nearby houses. Redhair testified that other officers arrived and used a police dog to find and capture appellant.

The State asked Redhair: “And did you find after this whole, did you have injuries to you?”

Redhair answered: "My right shoulder was sore for a couple of days. It was probably from bracing on the steering wheel. I'm sorry, my left shoulder."

Redhair testified that the SUV appellant was driving was stolen. In answer to questions by the court, Redhair testified that there was no reason for appellant to stop in the middle of the street and back up, and that other officers drove their police cars down the street to the front of the SUV.

Appellant testified in his defense and admitted that everything that Redhair said was true. He stated that, after Redhair initiated the traffic stop, his plan was to get out of the SUV, and run and hide in the creek behind nearby houses, but that he could not get out of the driver's side of the SUV because a pickup truck blocked his door. He testified that he backed up instead of moving forward "[b]ecause if I pulled forward it gives the cop time to get out of his car, and then he would have been blocking my path of where I needed to go." Appellant stated that he did not intend to harm anyone or to hit the police car; he just "wanted to get away." He stated: "I put it in reverse, stepped on the gas and the tires spun. And before I could put a stop on it, it was already in the car."

APPLICABLE LAW AND STANDARD OF REVIEW

Under Texas Penal Code section 22.01, if a person "intentionally, knowingly, or recklessly causes bodily injury to another," that person commits an offense of assault. TEX. PENAL CODE ANN. § 22.01(a)(1) (West 2011). If the person commits the offense against "a person the actor knows is a public servant while the public servant is lawfully discharging an official duty," the offense is a third-degree felony. TEX. PENAL CODE ANN. § 22.01(b)(1).

In reviewing a challenge to the legal sufficiency of the evidence, we examine all the evidence in the light most favorable to the verdict and determine whether a rational fact finder could have found the essential elements of the offense beyond a reasonable doubt. *Jackson v. Virginia*, 443 U.S. 307, 319 (1979); *Brooks v. State*, 323 S.W.3d 893, 899 (Tex. Crim. App. 2010) (plurality op.). We defer to the trier of fact's credibility and weight determinations because the trier of fact is the sole judge of the witnesses' credibility and the weight to be given their testimony. *See Jackson*, 443 U.S. at 326.

ANALYSIS

In two issues combined into one argument, appellant argues that the evidence is insufficient because it does not prove that Redhair suffered bodily injury or that appellant caused bodily injury and that, as a result, the State failed to prove an essential element of the offense. Alternatively, appellant argues that the State, at most, proved the class C misdemeanor of “intentionally or knowingly caus[ing] physical contact with another when the person knows or should reasonably believe that the other will regard the contact as offensive or provocative.” TEX. PENAL CODE ANN. § 22.01(a)(3). *See id.* § 22.01(c).

First Issue

Appellant argues that the only evidence in the record probative of the element of bodily injury was Redhair’s answer to the question of whether he was injured when appellant backed the SUV into Redhair’s police car. Redhair responded that his shoulder “was sore for a couple of days” and that this soreness “was probably from bracing on the steering wheel.” Appellant argues that “[t]his evidence is insufficient to prove bodily injury because Officer Redhair did not testify to experiencing physical pain within the meaning of the definition of bodily injury.” The State argues that the evidence was sufficient to prove that Redhair suffered bodily injury because “[t]he totality of Officer Redhair’s testimony and the inferences that may be reasonably drawn from it show that he experienced physical pain as a result of the collision.” We agree with the State.

The penal code defines “[b]odily injury” to mean “physical pain, illness, or any impairment of physical condition.” TEX. PENAL CODE ANN. § 1.07(a)(8) (West Supp. 2011). Under this broad definition, “[a]ny physical pain, however minor, will suffice to establish bodily injury.” *Garcia v. State*, 367 S.W.3d 683, 688 (Tex. Crim. App. 2012); *see Laster v. State*, 275 S.W.3d 512, 524 (Tex. Crim. App. 2009); *Lane v. State*, 763 S.W.2d 785, 786 (Tex. Crim. App. 1989). “Direct evidence

that a victim suffered pain is sufficient to show bodily injury.” *Laster*, 275 S.W.3d at 524. See *Lewis v. State*, 530 S.W.2d 117, 118 (Tex. Crim. App. 1975) (concluding the State proved “bodily injury” where victim’s testimony showed that she experienced “physical pain”). In addition, a fact finder may infer that the victim actually suffered or felt physical pain “because people of common intelligence understand pain and some of the natural causes of it.” *Garcia*, 367 S.W.3d at 688 (citing *Randolph v. State*, 152 S.W.3d 764, 774 (Tex. App.—Dallas 2004, no pet.)).

Redhair’s testimony that his shoulder was sore for a couple of days after the collision was sufficient to establish the element of bodily injury. See *Allen v. State*, 533 S.W.2d 352, 354 (Tex. Crim. App. 1976) (concluding testimony by officer that “his nose hurt, swelled, and was sore for three or four days” after being kicked by appellant showed “he suffered physical pain, and it is sufficient to support the jury verdict”). See also *Wawrykow v. State*, 866 S.W.2d 96, 98–100 (Tex. App.—Beaumont 1993, no pet.) (concluding that a rational fact finder could infer that blows by appellant to officer’s head hurt the officer or caused physical pain beyond a reasonable doubt, even in the absence of testimony that the blows hurt or caused pain); *Goodin v. State*, 750 S.W.2d 857, 859 (Tex. App.—Corpus Christi 1988, pet. ref’d) (“It is a reasonable inference men of common intelligence could certainly make that [the victim’s] bruises and muscle strain caused him ‘physical pain’ according to the fair import of that term as used in [the penal code’s definition of ‘bodily injury.’]”). Given the evidence presented at trial, the trial court as fact finder could have found beyond a reasonable doubt that Redhair suffered bodily injury.

Second Issue

In his second issue, appellant argues that, because Redhair did not state that he struck the steering wheel at the time of the collision or that the soreness resulted from the collision, “Redhair’s statement that the soreness stemmed from ‘bracing on the steering wheel’ does not demonstrate that Appellant *caused* bodily injury.” Appellant contends that the soreness Redhair experienced from bracing on the steering wheel, “among other things, could simply have been the result of anticipating the collision.”

The State argues that appellant’s proposed reading of Redhair’s testimony to mean that he caused his injury by pressing his shoulder against the steering wheel prior to the collision is “a tortured interpretation of the record.” Instead, the State contends, Redhair’s testimony supports the conclusion that the collision caused his shoulder injury because his shoulder was resting on the steering wheel at the time of the collision. The State also argues that, even if bracing on the steering wheel contributed to the soreness, “the collision was, at a minimum, a concurrent cause of the injury.” And the State argues that, even if Redhair’s testimony could be interpreted differently, the trial court as fact finder was free to resolve conflicting interpretations against appellant.

Appellant’s argument does not reflect the evidence in the record. As the State notes, Redhair’s statement that he sustained a sore shoulder probably from bracing against the steering wheel was in response to the State’s question about injuries he sustained as a result of the collision. Based on all of the evidence in the record, we conclude that a rational fact finder could have found that appellant caused Redhair’s bodily injury when appellant backed the SUV into Redhair’s police car.

We resolve appellant's first and second issues against him and affirm the trial court's judgment.

ELIZABETH LANG-MIERS
JUSTICE

Do Not Publish
TEX. R. APP. P. 47
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**Court of Appeals
Fifth District of Texas at Dallas**

JUDGMENT

JEFFREY ALLEN OTTO, Appellant

No. 05-10-00677-CR V.

THE STATE OF TEXAS, Appellee

Appeal from the 265th Judicial District Court
of Dallas County, Texas. (Tr.Ct.No. F07-
20871-R).

Opinion delivered by Justice Lang-Miers,
Justices Moseley and Murphy participating.

Based on the Court's opinion of this date, the judgment of the trial court is **AFFIRMED**.

Judgment entered August 13, 2012.

/Elizabeth Lang-Miers/
ELIZABETH LANG-MIERS
JUSTICE