**AFFIRM; and Opinion Filed November 9, 2017.**

**In The**
# Court of Appeals
# Fifth District of Texas at Dallas

**No. 05-16-01447-CR**

**TAWAIN JEROME EMORY, Appellant**
**V.**
**THE STATE OF TEXAS, Appellee**

**On Appeal from the County Criminal Court No. 11**
**Dallas County, Texas**
**Trial Court Cause No. MA-1670505-N**

## MEMORANDUM OPINION

Before Justices Lang-Miers, Brown, and Boatright
Opinion by Justice Brown

Following a jury trial, Tawain Jerome Emory appeals his conviction for misdemeanor family violence assault. In a single issue, he contends the evidence is legally insufficient to support the conviction. We affirm.

The information alleged that on or about April 4, 2016, appellant intentionally, knowingly, and recklessly caused bodily injury to Whitney Dizer by striking her with a hand and forcing her to the ground. It further alleged appellant had a dating relationship with Dizer and was a member of her family and household. Appellant pleaded not guilty. The jury found appellant guilty as charged in the information and assessed a $500 fine as punishment. The trial court's judgment includes an affirmative finding that the offense involved family violence.

At trial in November 2016, Dizer was nine months' pregnant and testified appellant was possibly the baby's father. She and appellant met through a dating website, and they later moved

into an apartment together. On April 4, 2016, Dizer's friend Hailey Barnett was in town from Oklahoma. Dizer drove home from work with her two children, Barnett, and appellant in the car. Appellant was mad because he did not want Barnett coming to their apartment. When they arrived at home, Dizer spoke to appellant inside the apartment while the kids and Barnett waited in the car. Appellant was "very angry" and "wasn't trying to reason at all." Dizer went back to the car thinking appellant would calm down. After a few minutes, she returned to the apartment with Barnett and the kids. Appellant blocked the apartment door and would not let them in. Dizer testified that appellant pushed her back and, as her was pushing her, he punched her "close by [her] chest, not too far from [her] neck." Dizer fell back on her four-year-old daughter, and they both fell to the ground. Dizer headed back to the car and dialed 911. A recording of the 911 call was played for the jury. Dizer testified she felt pain from the fall and the punch. On a scale of one to ten, Dizer described the pain as between seven and eight. In 2014, Dizer pleaded guilty to fraud and was on deferred adjudication community supervision for that offense.

During cross-examination, the defense admitted into evidence a handwritten statement Dizer gave to police the day of the incident. Defense counsel questioned Dizer about discrepancies between that statement, her testimony, and the 911 call. For example, neither the written statement nor the phone call mentioned her falling on the ground after appellant pushed her. In the written statement, Dizer wrote that she "fell back" and her kids "got pushed back as well." In the 911 call, Dizer said she "fell up against a wall." Dizer explained she was distraught at the time of the incident.

Dallas Police Officer Casey Esch responded to Dizer's 911 call. Esch testified that Dizer told him she had been assaulted by her boyfriend and had been punched in the chest and pushed to the ground. Dizer told him she did not have visible injuries, and the officer did not observe

any. Officer Esch did not come in contact with appellant that night; no one answered the apartment door. Esch identified one photograph of Dizer police took that night.

Appellant testified he and Dizer argued at the apartment door that night because he did not want Barnett in the apartment. After a few minutes, appellant went inside and locked the door. He denied punching or pushing Dizer. He heard police knocking later, but did not answer because he believed he had done nothing wrong.

In his single issue on appeal, appellant contends the evidence is legally insufficient to prove beyond a reasonable doubt that he caused Dizer bodily injury by striking her with his hand or by forcing her to the ground. He argues, "[T]here were no photographs, witness observations, medical records or any other evidence to corroborate Dizer's testimony that she had been assaulted." Appellant mentions the State's failure to call Barnett or Dizer's children as witnesses. He also notes Dizer did not have visible injuries and did not seek medical treatment, yet claimed the pain was between a seven and eight out of ten. In addition, appellant points out the inconsistencies between Dizer's testimony, her written statement, and the 911 call. He asserts Dizer is a "known liar," citing the fraud case.

A person commits assault if he intentionally, knowingly, or recklessly causes bodily injury to another. *See* TEX. PENAL CODE ANN. § 22.01(a)(1) (West Supp. 2016). "Bodily injury" is defined as "physical pain, illness, or any impairment of physical condition." *Id.* § 1.07(a)(8) (West Supp. 2016). Any 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). When reviewing the sufficiency of the evidence, we consider all of the evidence in the light most favorable to the verdict to determine whether, based on that evidence and the reasonable inferences therefrom, a factfinder was rationally justified in finding guilt beyond a reasonable doubt. *Temple v. State*, 390 S.W.3d 341, 360 (Tex. Crim. App. 2013);

*see Jackson v. Virginia*, 443 U.S. 307, 318–19 (1979). The factfinder is the sole judge of the credibility of the witnesses and the weight to be given their testimony. *Temple*, 390 S.W.3d at 360.

Appellant's sufficiency challenge amounts to an attack on Dizer's credibility. The jury chose to believe Dizer's version of events instead of appellant's. Because we will not second-guess the jury's assessment of the credibility and weight of witness testimony, appellant's allegation that Dizer's testimony was false plays no part in our sufficiency review. *See Balderas v. State*, 517 S.W.3d 756, 766 (Tex. Crim. App. 2016). Dizer testified that appellant pushed and punched her, causing her to fall to the ground. She expressly testified that appellant's actions caused her pain. Viewing the evidence in the light most favorable to the verdict, the jury could have found the elements of assault beyond a reasonable doubt. We overrule appellant's issue.

We affirm the trial court's judgment.

/Ada Brown/
ADA BROWN
JUSTICE

Do Not Publish
TEX. R. APP. P. 47.2(b).

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# Court of Appeals
# Fifth District of Texas at Dallas

## JUDGMENT

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| TAWAIN JEROME EMORY, Appellant | On Appeal from the County Criminal Court No. 11, Dallas County, Texas |
| No. 05-16-01447-CR V. | Trial Court Cause No. MA-1670505-N. |
| THE STATE OF TEXAS, Appellee | Opinion delivered by Justice Brown, Justices Lang-Miers and Boatright participating. |

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

Judgment entered this 9th day of November, 2017.