

Affirmed and Memorandum Opinion filed January 21, 2010.



In The

**Fourteenth Court of Appeals**

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**NO. 14-08-00816-CR**

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**LEONARDO TERRIQUEZ, Appellant**

**V.**

**THE STATE OF TEXAS, Appellee**

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**On Appeal from the 232nd District Court  
Harris County, Texas  
Trial Court Cause No. 1118368**

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**M E M O R A N D U M    O P I N I O N**

A jury found Leonardo Terriquez guilty of assault of a public servant; the trial court sentenced appellant to 25 years' confinement. In his sole issue on appeal, appellant argues that the evidence is factually insufficient to support his conviction for assault of a public servant. We affirm.

**Background**

At about 2 a.m. on May 26, 2007, Deputy San Miguel and Deputy Soto finished their shift. As the deputies exited their office building, they saw appellant in the parking

lot. Appellant appeared to be attempting to open one of the police cars parked in the lot. The parking lot was well lit, and the deputies had a clear view of appellant. Deputy San Miguel and Deputy Soto both were wearing their uniforms and asked appellant what he was doing. Appellant seemed startled, put his hands up, turned around, denied doing anything, and proceeded to walk away from the deputies.

The deputies identified themselves and asked appellant several times to stop in order to question him, but appellant continued to walk away. When the deputies asked appellant where he was going, he responded by cursing at them and proceeded to run away. The deputies chased appellant and instructed him to stop several times. When the deputies caught up with appellant, they identified themselves and instructed appellant “to get on the ground face down.”

Appellant started to comply but then swung his right arm and struck Deputy San Miguel’s left cheek with his fist. Deputy San Miguel grabbed appellant and they continued to struggle on the ground. Appellant continued cursing, swinging his arms, and kicking Deputy San Miguel’s body. As Deputy San Miguel tried to subdue him, appellant continued to fight. After the deputies warned appellant that they would use pepper spray on him if he did not stop, appellant continued fighting, and Deputy Soto sprayed appellant with pepper spray.

The deputies placed appellant on the bumper of a police car to wipe the pepper spray off; however, appellant cursed and proceeded to run away. Deputy San Miguel grabbed appellant, washed him, and placed him in the back of a police car. Appellant then started kicking out the window of the police car. There were no further incidents after Deputy San Miguel warned appellant that he would use pepper spray on him again if he did not stop.

At trial, Deputy San Miguel testified that he felt pain on the cheek when appellant struck him. Deputy San Miguel also testified that he could not recall how many times appellant struck his body during the struggle, but he stated that he suffered “a couple cuts on the fingers, minor bruising [on the] arm and whatnot.” The State also introduced

pictures Deputy San Miguel's wife took of his bruises after the struggle.

The jury found appellant guilty of assault of a public servant, and the trial court sentenced appellant to 25 years' confinement.

### **Analysis**

In his sole issue on appeal, appellant contends that the evidence is factually insufficient to support his conviction for assault of a public servant.

When conducting a factual sufficiency review, an appellate court must determine (1) whether the evidence introduced to support the verdict is "so weak" that the fact finder's verdict seems "clearly wrong and manifestly unjust," and (2) whether, considering conflicting evidence, the fact finder's verdict is nevertheless against the great weight and preponderance of the evidence. *Watson v. State*, 204 S.W.3d 404, 414-15 (Tex. Crim. App. 2006). We view the evidence in a neutral light in a factual sufficiency review. *Johnson v. State*, 23 S.W.3d 1, 11 (Tex. Crim. App. 2000) (en banc).

In order to declare that an evidentiary conflict justifies a new trial, an appellate court must rely on some objective basis in the record demonstrating that the great weight and preponderance of the evidence contradicts the jury's verdict. *See Lancon v. State*, 253 S.W.3d 699, 706-07 (Tex. Crim. App. 2008). An appellate court should not intrude upon the fact finder's role as the sole judge of the weight and credibility of witness testimony. *Vasquez v. State*, 67 S.W.3d 229, 236 (Tex. Crim. App. 2002). The fact finder may choose to believe or disbelieve any portion of the testimony presented at trial. *Bargas v. State*, 252 S.W.3d 876, 887 (Tex. App.—Houston [14th Dist.] 2008, no pet.) (citing *Sharp v. State*, 707 S.W.2d 611, 614 (Tex. Crim. App. 1986) (en banc)); *see Lancon*, 253 S.W.3d at 707.

A person commits an assault of a public servant when he intentionally, knowingly, or recklessly causes bodily injury to another person the actor knows is a public servant while the public servant is lawfully discharging an official duty. *See Tex. Pen. Code Ann. § 22.01(b)(1)* (Vernon Supp. 2009). "Bodily injury" is defined as "physical pain,

illness, or any impairment of physical condition.” Tex. Penal Code Ann. § 1.07(a)(8) (Vernon Supp. 2009). “This definition is purposefully broad and seems to encompass even relatively minor physical contacts so long as they constitute more than mere offensive touching.” *Salley v. State*, 25 S.W.3d 878, 881 (Tex. App.—Houston [14th Dist.] 2000, no pet.) (citing *Lane v. State*, 763 S.W.2d 785, 786 (Tex. Crim. App. 1989) (en banc)). “The existence of a cut, bruise, or scrape on the body is sufficient evidence of physical pain necessary to establish ‘bodily injury’ within the meaning of the statute.” *Arzaga v. State*, 86 S.W.3d 767, 778 (Tex. App.—El Paso 2002, no pet.) (citing *Bolton v. State*, 619 S.W.2d 166, 167 (Tex. Crim. App. 1981) (en banc) (evidence of cut on arm sufficient to show bodily injury)).

Appellant contends that the evidence is factually insufficient to support his conviction for assault of a public servant, and specifically argues that the evidence is factually insufficient to prove that Deputy San Miguel suffered bodily injury. Appellant claims that Deputy San Miguel (1) “suffered little if any bruising[;]” (2) “took no pictures of his alleged injury[;]” and (3) claimed to have suffered only “‘pain,’ aside from some minor cuts.” “On the other side,” appellant claims that the evidence showed he “had a deformed and scarred hand which was shaky, and thus would have been most likely unable to inflict the alleged injuries.”

Deputy San Miguel testified that he felt pain when appellant struck him on the cheek. Bodily injury includes physical pain. Tex. Penal Code Ann. § 1.07(a)(8). He also testified that, although he could not recall how many times appellant struck his body during the struggle, he had cuts on his fingers and minor bruising on his “arm and whatnot” after the struggle. At trial, the State also introduced pictures of Deputy San Miguel’s bruised shoulder and arm.

Although appellant claims that he “would have been most likely unable to inflict the alleged injuries” because he “had a deformed and scarred hand which was shaky,” no evidence was presented at trial that appellant’s hand was incapable of causing bodily injury. Further, the jury was in the best position to judge the credibility of the witnesses

and weigh conflicts in the evidence. *See Lancon*, 253 S.W.3d at 705. Viewing the evidence in a neutral light, we conclude the evidence is factually sufficient to support appellant's conviction for assault of a public servant; the jury's finding is neither clearly wrong nor manifestly unjust. Accordingly, we overrule appellant's sole issue.

### **Conclusion**

The judgment of the trial court is affirmed.

/s/ William J. Boyce  
Justice

Panel consists of Chief Justice Hedges and Justices Anderson and Boyce.

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