



Fourth Court of Appeals
San Antonio, Texas

MEMORANDUM OPINION

No. 04-16-00563-CR

Jon Eric Adam **ANDRADE**,
Appellant

v.

The **STATE** of Texas,
Appellee

From the 379th Judicial District Court, Bexar County, Texas
Trial Court No. 2016CR4070
Honorable Ron Rangel, Judge Presiding

Opinion by: Rebeca C. Martinez, Justice

Sitting: Marialyn Barnard, Justice
Rebeca C. Martinez, Justice
Irene Rios, Justice

Delivered and Filed: September 6, 2017

AFFIRMED

Jon Eric Adam Andrade appeals his conviction of three counts of causing serious bodily injury to a child. We affirm the trial court's judgment.

BACKGROUND

Andrade was indicted on four counts of Serious Bodily Injury to a Child arising out of a single incident. Following a jury trial, Andrade was found guilty of three of the counts as charged in the indictment. The trial court sentenced Andrade to fifty years' imprisonment on each count, with the sentences to run concurrently.

At trial, Lindsay Sunshine Ross, the mother of 14-month-old R.H., testified that on the evening of July 19, 2015, she and her boyfriend, Andrade, were in bed when R.H. began crying in the next room. Andrade told Lindsay he would tend to the child, and Lindsay went back to sleep. A video revealed that Andrade proceeded to choke, hit, bite, suffocate, and body-slam R.H. The following morning, Lindsay noticed bruising on the child's forehead and a bite mark on his thigh. Andrade suggested to Lindsay that R.H. must have been hurt at daycare. Unbeknownst to both Lindsay and Andrade, Lindsay's cousin had installed video cameras in parts of the house, including in the nursery for security purposes. The cousin watched the video of the events that transpired between Andrade and R.H. and then showed the video to Lindsay. On July 22, 2015, Lindsay went to see her father for advice, and he called the police. Lindsay made a statement to the responding officer regarding the incident, and then took R.H. to the hospital to have his injuries examined. Andrade was subsequently charged with and convicted of causing serious bodily injury to R.H.

DISCUSSION

In his sole issue on appeal, Andrade challenges the sufficiency of the evidence to prove he caused the child to suffer "serious bodily injury." In reviewing the legal sufficiency of the evidence, we determine whether, viewing all the evidence in the light most favorable to the verdict, 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, 319 (1979); *Brooks v. State*, 323 S.W.3d 893, 899 (Tex. Crim. App. 2010). We defer to the jury's assessment of the credibility of the witnesses and the weight to be given to their testimony, and resolve any inconsistencies in the evidence in favor of the jury's verdict. *Brooks*, 323 S.W.3d at 899; *Curry v. State*, 30 S.W.3d 394, 406 (Tex. Crim. App. 2000).

A person commits the offense of injury to a child if he “intentionally, knowingly, recklessly, or with criminal negligence, by act or intentionally, knowingly, or recklessly by omission, causes to a child . . . serious bodily injury.” TEX. PENAL CODE ANN. § 22.04(a)(1) (West Supp. 2016). Andrade does not assert the evidence is insufficient to prove he caused bodily injury to R.H. Rather, he claims the evidence is insufficient to prove the injuries rose to the level of “serious bodily injury.” The Penal Code defines “serious bodily injury” as “bodily injury that creates a substantial risk of death or that causes death, serious permanent disfigurement, or protracted loss or impairment of the function of any bodily member or organ.” *Id.* § 1.07(a)(46) (West Supp. 2016). “Bodily injury” means “physical pain, illness, or any impairment of physical condition.” *Id.* § 1.07(a)(8) (West Supp. 2016).

In reviewing the sufficiency of the evidence to prove serious bodily injury, the relevant inquiry is the degree of risk posed by the victim’s injuries as they were inflicted by the defendant, “not after the effects [have] been ameliorated or exacerbated by other actions such as medical treatment.” *Stuhler v. State*, 218 S.W.3d 706, 714 (Tex. Crim. App. 2007); *Brown v. State*, 605 S.W.2d 572, 575 (Tex. Crim. App. 1980). The Court of Criminal Appeals recently explained that the plain language of the statutory definition of serious bodily injury “refers to the injury caused by the offender, and it does not require consideration of any medical treatment that may have lessened the impact of the injury.” *Blea v. State*, 483 S.W.3d 29, 34 (Tex. Crim. App. 2016). Reaffirming the *Brown* standard, the court held that, “in determining whether a bodily injury creates a substantial risk of death, a court . . . considers the disfiguring and impairing quality of the bodily injury as it was inflicted on a complainant by an offender,” and does not consider “the amelioration or exacerbation of an injury by actions not attributable to the offender, such as medical treatment.” *Id.* at 34-35.

In order to convict Andrade on Counts I, II, and III of the indictment, the State had to prove, beyond a reasonable doubt, that Andrade intentionally and knowingly caused bodily injury to R.H., a child 14 years of age or younger, that created a substantial risk of death “by blocking the breathing or circulation of the blood of [R.H.], and by applying pressure to [R.H.]’s throat or neck with the hand of [Andrade],” “by blocking [R.H.]’s nose or mouth with the hand and arm of [Andrade],” and “by striking [R.H.] with the hands of [Andrade].” *See* TEX. PENAL CODE ANN. § 22.04(a)(1) (West Supp. 2016).

The video was admitted into evidence and played for the jury. It shows that, over a period of hours, Andrade pressed R.H.’s face down into the bed, covered R.H.’s mouth for at least 10 or 15 seconds, held R.H. by the neck, choked R.H., punched R.H. in the stomach, and bit R.H. on the thigh. At various times, Andrade is seen looking toward the door of the nursery. Lindsay’s father, Kyle Ross, testified that he watched parts of the video and at one point it looked like his grandson R.H. was “basically out cold.” San Antonio Police Officer Mario Aguero testified that he responded to the 911 call made three days after the incident. He interviewed Lindsay, who showed him the video. Aguero watched parts of the video which he stated showed a crime occurring, and then called for a detective. Aguero observed a small bump and bruise on top of the child’s head and a light bite mark on his inner left thigh. He advised Lindsay to take R.H. to the hospital to be examined for any underlying injuries.

The State also presented the expert testimony of Dr. James Lukefahr, a pediatrician who specializes in child abuse and who is the medical director for the Center for Miracles, a Santa Rosa Hospital facility. Dr. Lukefahr testified that his opinion in the case was based on his review of R.H.’s medical records from the emergency room, his review of the entire video showing Andrade’s actions toward R.H., and his expertise and experience with child abuse cases. Dr. Lukefahr testified that each instance of punching, holding by the neck and choking, pressing the

baby's face firmly into the bed, and placing an adult hand over the baby's mouth for at least 10 to 15 seconds caused R.H. to suffer pain and put him at a substantial risk for death. Dr. Lukefahr opined that each of those actions caused "serious bodily injury," i.e., a substantial risk of death, to R.H. at the time they were inflicted. The fact that the emergency room medical records showed R.H. was not experiencing any physical symptoms at the time of the exam, and had no fractures or brain damage, did not change Dr. Lukefahr's opinion.

Considering the nature of the assaultive conduct engaged in by Andrade against R.H. as shown on the video, i.e., punching in the stomach, choking, and suffocating over an extended period, along with the testimony of Dr. Lukefahr and Kyle Ross, we conclude the evidence is sufficient to prove that the injuries suffered by R.H. at the time of their infliction created a substantial risk of death, and that R.H. therefore suffered serious bodily injury at the hands of Andrade. *See Blea*, 483 S.W.3d at 34-35; *see, e.g., Akbar v. State*, 660 S.W.2d 834, 836 (Tex. App.—Eastland 1983, pet. ref'd) (jury could rationally find victim's injuries created a substantial risk of death when the victim was strangled until "almost blackout").

Based on the foregoing analysis, we hold that any rational trier of fact could have found beyond a reasonable doubt that Andrade's acts against R.H. created a substantial risk of death and constituted serious bodily injury. We therefore overrule Andrade's sole issue on appeal and affirm the trial court's judgment.

Rebeca C. Martinez, Justice

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