

NO. 07-09-00268-CR
IN THE COURT OF APPEALS
FOR THE SEVENTH DISTRICT OF TEXAS
AT AMARILLO
PANEL C
MARCH 24, 2010

ANDREA GORDON,

Appellant

v.

THE STATE OF TEXAS,

Appellee

FROM THE 108TH DISTRICT COURT OF POTTER COUNTY;
NO. 56,388-E; HONORABLE DOUGLAS WOODBURN, PRESIDING

Memorandum Opinion

Before QUINN, C.J., and HANCOCK and PIRTLE, JJ.

Andrea Gordon was indicted for aggravated assault with a deadly weapon and convicted by a jury of the lesser offense of deadly conduct. She seeks reversal of that conviction on the basis that the evidence is legally and factually insufficient to support it. The State concedes error, and we reverse the judgment.

The jury was instructed that it could convict appellant of deadly conduct if it found that she knowingly discharged a firearm at or in the direction of a building and was reckless as to whether it was occupied. See TEX. PENAL CODE ANN. §22.05(b)(2)

(Vernon 2003).¹ The phrase “at or in the direction of” by its plain language contemplates that the firearm be discharged from some location other than the building or habitation itself. *Reed v. State*, 268 S.W.3d 615, 617 (Tex. Crim. App. 2008). The evidence here is undisputed that appellant fired a weapon in her own home while in her bedroom. Thus, it is not legally sufficient to support the jury’s verdict, as conceded by the State. *Id.* at 617-18.

Accordingly, we reverse the conviction and enter a judgment of acquittal.

Per Curiam

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¹Neither party challenges the jury charge on appeal.