NO. 07-10-0026-CR

IN THE COURT OF APPEALS

FOR THE SEVENTH DISTRICT OF TEXAS

AT AMARILLO

PANEL C

JULY 19, 2010

ALFRED JOHN MCDONALD,

Appellant

v.

THE STATE OF TEXAS,

Appellee

FROM THE COUNTY CRIMINAL COURT NO. 1 OF DENTON COUNTY;

NO. CR-2009-02848-A; HONORABLE JIM CROUCH, PRESIDING

Memorandum Opinion

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

Alfred John McDonald was convicted of assault against his wife and sentenced to 120 days confinement in the county jail and a fine of $4,000. He contends in four issues that the evidence is insufficient to sustain that conviction. We disagree and affirm the judgment.

We review challenges to the sufficiency of the evidence by the standards discussed in *Jackson v. Virginia,* 443 U.S. 307, 99 S.Ct. 2781, 61 L.Ed.2d 560 (1979)[1] and *Watson v. State,* 204 S.W.3d 404 (Tex. Crim. App. 2006). Appellant argues that the evidence is insufficient to show that he caused bodily injury to the complainant by pushing her, striking her, or choking her with his hand as alleged in the information because the complainant testified that appellant only pushed her to the bed.[2] When different means of committing the same offense are submitted to the jury, a general verdict is proper if the evidence is sufficient to support any one of those means. *Kitchens v. State,* 823 S.W.2d 256, 258 (Tex. Crim. App. 1991).

Bodily injury means "physical pain, illness, or any impairment of physical condition. TEX. PENAL CODE ANN. §1.07(a)(8) (Vernon Supp. 2009). A jury may reasonably infer that the victim suffered pain as a result of her injuries. *Arzaga v. State,* 86 S.W.3d 767, 778 (Tex. App.–El Paso 2002, no pet.); *Goodin v. State,* 750 S.W.2d 857, 859 (Tex. App.–Corpus Christi 1988, pet. ref'd). Moreover, a jury may apply common sense, knowledge, and experience gained in ordinary life when making such reasonable inferences. *Eustis v. State,* 191 S.W.3d 879, 884 (Tex. App.–Houston [14th Dist.] 2006, pet. ref'd). The existence of a bruise or scrape on the body is sufficient evidence of physical pain. *Arzaga v. State,* 86 S.W.3d at 778.

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[1]Appellant's first issue is whether the trial court erred in failing to grant an instructed verdict. Such a contention is a challenge to the legal sufficiency of the verdict. *Williams v. State,* 937 S.W.2d 479, 482 (Tex. Crim. App. 1996). In his other three issues, he merely states that the evidence is insufficient and does not specify as to whether he is challenging the legal or factual sufficiency of the evidence.

[2]A person commits assault if he intentionally, knowingly, or recklessly causes bodily injury to another, including the person's spouse. TEX. PENAL CODE ANN. §22.01(a)(1) (Vernon Supp. 2009).

In the light most favorable to the verdict, the evidence shows: 1) the victim made a 911 call in which she stated that appellant hit her, 2) the victim told a responding police officer that appellant had broken into the bedroom, squeezed her so tight she could not breathe, hit her, and choked her with his hands, 3) the door frame to the bedroom was damaged, 4) the victim's pants were torn, 5) appellant had a scratch on his face, 6) the victim had red marks on her neck consistent with someone's hands as well as scratches and a red mark on her arms, and 7) when questioned as to whether those injuries hurt, she responded, "I guess . . . I was crying and mad, and then maybe that's what I say. " The jury could have reasonably inferred from this evidence, beyond a reasonable doubt, that appellant pushed, struck, or choked the victim and that she suffered pain from those actions.

It is true that the victim denied at trial that appellant had struck her or choked her although she admitted that they had argued and he had pushed her on the bed. She further attempted to explain that the bedroom door had been previously damaged and that she had sustained the physical injuries in wrestling with her husband, son and nephew a couple days earlier and that she had sensitive skin. The inconsistencies between the victim's statements to police and her testimony at trial were for the jury to resolve, and it was free to disbelieve any recantation of the statements made to police. *Chambers v. State,* 805 S.W.2d 459, 461 (Tex. Crim. App. 1991); *Navarro v. State,* 280 S.W.3d 405, 407 (Tex. App.–Amarillo 2008, no pet.). Furthermore, the jury's resolution of those matters is not so against the great weight of the evidence as to undermine our confidence in it.

Accordingly, we overrule appellant's issues and affirm the judgment.

Per Curiam

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