

**TEXAS COURT OF APPEALS, THIRD DISTRICT, AT AUSTIN**

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**NO. 03-10-00417-CR**

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**Bryan Anthony Johnson, Appellant**

**v.**

**The State of Texas, Appellee**

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**FROM THE DISTRICT COURT OF TRAVIS COUNTY, 331ST JUDICIAL DISTRICT  
NO. D-1-DC-09-206100, HONORABLE BOB PERKINS, JUDGE PRESIDING**

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**MEMORANDUM OPINION**

A jury found appellant Bryan Anthony Johnson guilty of assaulting a family member by applying pressure to the neck, thereby impeding the victim's normal breathing or blood circulation. *See* Tex. Penal Code Ann. § 22.01(a)(1), (b)(2)(B) (West Supp. 2010). The jury assessed punishment at four years' imprisonment. Appellant contends that the evidence is insufficient to sustain the finding of guilt. We overrule this contention and affirm the conviction.

Appellant's brief contains separate points of error asserting that the evidence is legally and factually insufficient. We no longer employ distinct legal and factual sufficiency standards when reviewing the sufficiency of the evidence to sustain a criminal conviction. *Brooks v. State*, 323 S.W.3d 893, 912 (Tex. Crim. App. 2010). Instead, the only standard for determining whether the evidence proves the defendant's guilt beyond a reasonable doubt is the *Jackson* due process standard. *Id.*; *see Jackson v. Virginia*, 443 U.S. 307, 319 (1979). Under *Jackson*, the question

presented is whether, after viewing all the evidence in the light most favorable to the verdict, a rational trier of fact could have found the essential elements of the offense beyond a reasonable doubt. 443 U.S. at 319. The reviewing court may impinge on the trier of fact's discretion only to the extent necessary to guarantee the fundamental protection of due process of law. *Id.*

On the morning of October 18, 2009, a youthful caller told Travis County 911 dispatcher Heather Deason, "My dad is choking my mom right now."<sup>1</sup> The caller gave Deason an address at an apartment complex on Heatherwilde Boulevard in Pflugerville. Deason testified that the 911 GPS system confirmed the address. As Deason was transferring the call to the Pflugerville Police Department, a voice in the background can be heard to say, "Get off the phone." When the Pflugerville dispatcher came on the line, a male voice told her that someone was "playing on the phone." This speaker gave the dispatcher an address on Cameron Road in Austin.

Pflugerville officers who responded to the call found six persons living at the apartment: appellant, his wife Robin Johnson, and four children, the oldest being Jordan Donner, appellant's thirteen-year-old stepson. Officers Jeff Sarrels and James Colligan testified that Johnson appeared to be disoriented. She was coughing and had difficulty breathing. Colligan testified that when he asked Johnson what had happened, she told him, "I passed out. He choked me." Soon after the officers arrived, Johnson ran to the bathroom and vomited what appeared to be blood. The officers observed and photographed several injuries on Johnson's body, including bruises and scratches on her neck, an abrasion on her shoulder, and wounds on her arm and shin. The photographs were admitted in evidence.

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<sup>1</sup> A recording of the call was introduced in evidence and is part of the appellate record.

Jordan Donner testified that after hearing a commotion in his parents' bedroom, he entered the room and found appellant choking Johnson in the closet. Donner ran to a neighbor's apartment to summon help, then he returned to his own apartment and made the 911 call. He testified that after making the call, he returned to the bedroom and saw his mother lying unconscious in the closet. Donner testified that he could not remember exactly how appellant was choking his mother, but in his statement to the police he said that appellant used his right arm. Donner conceded during cross-examination that he observed the incident for only a few seconds, and he was not wearing his glasses. Donner testified that he had never before seen appellant strike Johnson.

Johnson testified that on the morning in question, she and appellant were arguing about an affair that appellant was having with another woman. She said that during the course of the argument, she went to the closet and began throwing appellant's clothes. She testified that she could not remember what happened after that. She claimed that her next memory was waking up in the closet. She added that she might have passed out due to low blood sugar, and suggested that her injuries were sustained as she was throwing things around in the closet.

Johnson testified that she had no memory of appellant choking her or of telling the police that he had done so. She acknowledged, however, giving a written statement saying that appellant threw her against a wall and struck her until she passed out. The statement also said that appellant told her that she was going to die, and that she thought that appellant was trying to kill her.

Dr. Robert Simpkins treated Johnson at the hospital that morning. He testified that Johnson told him that she had been strangled or choked. He said that the injuries he observed were

consistent with strangulation. Simpkins testified that Johnson did not report having a seizure, and that the paramedics did not report having revived her by giving her sugar.

Appellant argues that the evidence does not support a finding beyond a reasonable doubt that he caused bodily injury to Johnson by choking her into unconsciousness. He points to Johnson's testimony that she did not remember being choked and suggesting that she passed out due to low blood sugar. He also notes that Donner acknowledged that he did not clearly see what was going on in his parents' bedroom, and that the boy testified that appellant had not previously struck Johnson. Appellant's argument fails to take into consideration the statements Johnson made to the police at the apartment that morning. He also fails to consider the marks on Johnson's neck that the officers saw and documented with photographs. These marks were consistent with choking and thus tend to corroborate Donner's testimony and Johnson's initial outcry. The jury could also consider the evidence that appellant gave the 911 dispatcher a false address, conduct that is suggestive of guilt. Considering all the evidence in the light most favorable to the verdict, a rational trier of fact could find beyond a reasonable doubt that appellant intentionally, knowingly, or recklessly caused bodily injury to Johnson, a member of his family, by applying pressure to Johnson's neck so as to impede her normal breathing and blood circulation.

The points of error are overruled, and the judgment of conviction is affirmed.

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J. Woodfin Jones, Chief Justice

Before Chief Justice Jones, Justices Henson and Goodwin

Affirmed

Filed: May 24, 2011

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