Affirmed and Opinion filed June 28, 2001.

In The

Fourteenth Court of Appeals

NO. 14-00-00667-CR

JEROME MICHAEL WILLIAMS, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the 230th District Court
Harris County, Texas
Trial Court Cause No. 832,536

O P I N I O N

A jury found appellant guilty of aggravated assault and assessed punishment at twelve years' confinement in the Texas Department of Criminal Justice, Institutional Division. Appellant raises four points of error for our review. In his first, second, and third points of error appellant complains that the evidence was legally and factually insufficient to support his conviction for aggravated assault. By point of error four, appellant contends that the trial court abused its discretion in permitting testimony from an expert witness. We affirm.

On January 5, 2000, Harris County Sheriff's Deputy Johnny Gonzales responded to a 911 call from the home of Charonda Hatter ("complainant"), placed by the complainant's

twelve-year old son, Joshua Sergeant. During the conversation with the 911 operator, Joshua told the operator that his father had thrown a brick at his mother. When Deputy Gonzales arrived at the scene he found a distraught complainant. Additionally, Deputy Gonzales observed cuts on her wrist and neck. The complainant told Deputy Gonzales that she had an argument with appellant the day before and called the appellant on the morning of the incident to tell him that they were breaking up and that she would bring his belongings to his father's house. Appellant showed up at the complainant's residence, but she would not let him into the house. Consequently, appellant kicked in the door and grabbed the complainant by the neck. The complainant escaped from the grasp of appellant and got into her vehicle. Appellant then picked up a brick from the side of the driveway and threw it through the driver's window. The complainant told Deputy Gonzales that the glass and brick struck her on the left side of her face. At the time of trial, however, the testimony of both the complainant and her son changed.

The complainant testified that appellant broke the window with his hand while his hands were inside the car. Moreover, there were no bricks anywhere on her property. Additionally, Joshua testified that appellant broke the window with his hand. Joshua testified that he never saw appellant throw a brick at his mother and just assumed that the window was broken with a brick, but believed that appellant must have broken the window with his hand because there was no brick in the car when Joshua returned from school on the afternoon of the incident.

In his first three points of error, appellant complains that the evidence was legally and factually insufficient to support his conviction for aggravated assault. Specifically, appellant contends that the evidence was legally and factually insufficient, first, to support a finding that appellant, in fact, used a brick and, second, that if a brick was used, it constituted a deadly weapon. We disagree.

In reviewing legal sufficiency challenges, appellate courts are to view the evidence in the light most favorable to the prosecution, overturning the lower court's verdict only if a rational trier of fact could not have found all elements of the offense beyond a reasonable doubt. *Lacour v. State*, 8 S.W.3d 670, 671 (Tex. Crim. App. 2000); *Santellan v. State*, 939

S.W.2d 155, 160 (Tex. Crim. App. 1997) (citing *Jackson v. Virginia,* 443 U.S. 307, 319, 99 S.Ct. 2871, 2879, 61 L.Ed.2d 560 (1979)). "[I]f any evidence establishes guilt beyond a reasonable doubt, the appellate court may not reverse the fact finder's verdict on grounds of legal insufficiency." *Arthur v. State,* 11 S.W.3d 386, 389 (Tex. App.—Houston [14th Dist.] 2000, pet. ref'd).

In reviewing factual sufficiency challenges, appellate courts must determine "whether a neutral review of all the evidence, both for and against the finding, demonstrates that the proof of guilt is so obviously weak as to undermine confidence in the jury's determination, or the proof of guilt, although adequate if taken alone, is greatly outweighed by contrary proof." *Johnson v. State,* 23 S.W.3d 1, 11 (Tex. Crim. App. 2000). Evidence is factually insufficient if, 1) it is so weak as to be clearly wrong and manifestly unjust; or 2) the adverse finding is against the great weight and preponderance of the available evidence. *Id*. The *Johnson* court reaffirmed the requirement that "due deference must be accorded the fact finder's determinations, particularly those determinations concerning the weight and credibility of the evidence." *Id*. at 9.

With regard to appellant's contention that the evidence was legally insufficient to support a finding that a brick was ever used by appellant, the evidence is clear that the complainant and the complainant's son both stated prior to trial that appellant threw a brick at her. Moreover, Deputy Gonzales testified that the complainant pointed to some bricks lying near the driveway as being from where appellant grabbed the brick which he threw through her car window. Viewing the evidence in the light most favorable to the prosecution, we find the evidence legally sufficient to support a finding that appellant used a brick to break the complainant's car window.

Under a factual sufficiency review we must consider all the evidence. As stated earlier, the complainant's son spoke to a 911 operator and told her that appellant had thrown a brick at his mother. The complainant told Deputy Gonzales that appellant threw a brick through her car window, striking her in the face. At trial, however, both the complainant and the

complainant's son testified that appellant never threw a brick at the complainant. Since the jury is the sole judge of credibility, they could have chosen to disbelieve the complainant's and her son's trial testimony. Accordingly, based on a review of all the evidence, the finding that appellant threw a brick at the complainant was not greatly outweighed by contrary proof.

Next we must determine whether the evidence was legally and factually sufficient to support that the brick used by appellant was a "deadly weapon."

Texas Penal Code section 1.07(a)(17) defines a deadly weapon as: "(A) a firearm or anything manifestly designed, made, or adapted for the purpose of inflicting death or serious bodily injury; or (B) anything that in the manner of its use or intended use is capable of causing death or serious bodily injury." TEX. PEN. CODE ANN. § 1.07(a)(17) (Vernon Supp. 2001). "However, '[t]he provision's plain language does not require that the actor actually intend death or serious bodily injury; an object is a deadly weapon if the actor intends a use of the object in which it would be capable of causing death or serious bodily injury. The placement of the word capable in the provision enables that statute to cover conduct that threatens deadly force, even if the actor has no intention of actually using deadly force.'" *Shugart v. State*, 32 S.W.3d 355, 361 (Tex. App.—Waco 2000, pet. ref'd) (quoting *McCain v. State*, 22 S.W.3d 497, 503 (Tex. Crim. App. 2000)).

The complainant's initial statement to Deputy Gonzales establishes that the brick thrown by appellant was thrown with enough force to go through the closed driver's side window and strike the complainant in the face. While the complainant asserts at trial that the window to her car was broken with appellant's hands, the jury, being the sole judge of credibility, was entitled to disbelieve the complainant's testimony and find that appellant did in fact strike her with a brick. Additionally, Deputy Gonzales testified that in his opinion throwing a brick through a car window was capable of causing death and serious bodily injury. Viewing the evidence in the light most favorable to the prosecution, we find the evidence legally sufficient to support a finding that the brick used by appellant was a "deadly weapon." Moreover, we find that the evidence establishing that the brick was a deadly weapon was not

so weak as to be clearly wrong and manifestly unjust, or against the great weight and preponderance of the available evidence.

The evidence was both legally and factually sufficient to support a finding that appellant used a brick in assaulting the complainant, and that in the manner of its use, the brick was a "deadly weapon." Accordingly, we overrule appellant's first, second, and third points of error.

In his fourth point of error, appellant argues that the trial court erred in permitting testimony from Ms. Varela, a social worker, because her testimony did not aid the jury in understanding the evidence. We disagree.

Expert testimony is admissible when scientific, technical, or other specialized knowledge will assist the trier of fact in understanding the evidence or in determining a fact issue. TEX. R. EVID. 702. Evidence admissible under Rule 702 may include testimony which compares general or classical behavioral characteristics of a certain type of victim's behavior patterns. *Duckett v. State*, 797 S.W.2d 906, 917 (Tex. Crim. App. 1990) (holding that testimony regarding reaction of most victims of child abuse helpful to the jury in determing if an assault occurred); *Fielder v. State*, 756 S.W.2d 309, 321 (Tex. Crim. App. 1988) (holding that testimony of expert helped explain inconsistency in appellant's behavior consistent with that of a typical battered woman); *Scugoza v. State*, 949 S.W.2d 360, 363 (Tex. App.—San Antonio 1997, no pet.) (holding that testimony of expert helped explain inconsistencies between the complainants trial testimony and her previous report as a product of the cycle of abuse in family violence situations).

Like the expert in *Scugoza*, Ms. Varela testified concerning the cycle of abuse found in family violence situations, a topic helpful in explaining why the complainant's trial testimony differed from her initial report to Deputy Gonzales. Accordingly, appellant's fourth point of error is overruled.

Having overruled all of appellant's points of error, we affirm the judgment of the trial court.

/s/ Paul C. Murphy
Senior Chief Justice

Judgment rendered and Opinion filed June 28, 2001.

Panel consists of Justices Edelman, Frost, and Senior Chief Justice Murphy.[*]

Do Not Publish — TEX. R. APP. P. 47.3(b).

[*] Senior Chief Justice Paul C. Murphy sitting by assignment.