

Note: Decisions of a three-justice panel are not to be considered as precedent before any tribunal.

ENTRY ORDER

SUPREME COURT DOCKET NO. 2003-046

NOVEMBER TERM, 2003

	}	APPEALED FROM:
	}	
State of Vermont	}	District Court of Vermont, Unit No. 2,
	}	Bennington Circuit
v.	}	
	}	
John Brooks	}	DOCKET NO. 104-1-02 Bncr
	}	
	}	Trial Judge: David A. Howard
	}	
	}	

In the above-entitled cause, the Clerk will enter:

Defendant appeals from a judgment of conviction, based on a jury verdict, of second degree aggravated domestic assault. Defendant contends the evidence was insufficient to prove beyond a reasonable doubt that he caused bodily injury to the victim. We affirm.

The domestic assault charge resulted from an incident that occurred during an argument between defendant and the victim. Both had been drinking. The victim testified that defendant slapped her across the face and that she fell to the ground. She stated that the blow hurt. The victim's daughter, who witnessed the altercation, corroborated the victim's testimony that defendant hit her and that she fell. The officer who responded to the scene noted that the victim appeared to be upset and had been crying. She told him that defendant had struck her across the face and knocked her to the ground. The officer observed no marks or other injuries to the victim's face.

Defendant moved for judgment of acquittal at the close of the State's evidence, asserting that the evidence was insufficient to prove beyond a reasonable doubt that he had caused physical injury to the victim. The offense of second degree aggravated domestic assault, in violation of 13 V.S.A. § 1044(a)(2), consists of a second or subsequent offense of domestic assault which causes "bodily injury." "Bodily injury" is defined by the statute as including "physical pain, illness or any impairment of physical condition." *Id.* § 1021(1). The court denied the motion, finding that the evidence was sufficient to support a conviction. The jury returned a verdict of guilty, and defendant stipulated to a prior conviction of domestic assault. This appeal followed.

Defendant's sole contention on appeal is that he was entitled to acquittal because the evidence was insufficient to prove beyond a reasonable doubt that he caused bodily injury to the victim. In reviewing the denial of a motion for acquittal, we must determine whether the evidence, viewed in the light most favorable to the prosecution and excluding any modifying evidence, sufficiently and fairly supports a finding by the trier of fact that defendant is guilty beyond a reasonable doubt. *State v. Durenleau*, 163 Vt. 8, 10 (1994). We conclude that the evidence meets this standard. The victim here testified that defendant struck her across the face, knocking her to the ground. The victim's daughter witnessed and corroborated the assault, and the victim's contemporaneous statement to the investigating officer was consistent with her later testimony. The victim also testified that the blow hurt. This was sufficient to establish the "physical pain" component of bodily injury under the statutory definition. 13 V.S.A. § 1021(1). Contrary to defendant's suggestion, there is no statutory requirement that the pain resulting from the blow to the victim's face be accompanied by physical symptoms such as bruises or cuts. Nor does the victim's failure to state that she was injured to the police dispatcher undermine the otherwise ample evidence that she was struck and hurt. Accordingly, we discern no basis to disturb the judgment.

Affirmed.

BY THE COURT:

Jeffrey L. Amestoy, Chief Justice

Denise R. Johnson, Associate Justice

Paul L. Reiber, Associate Justice