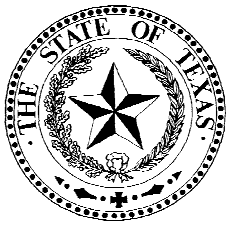
**Affirmed and Opinion filed December 6, 2001.**



**In The**

# Fourteenth Court of Appeals

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**NO. 14-00-01359-CR**

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**IBIYE VINCENT KOKO, Appellant**

**V.**

**THE STATE OF TEXAS, Appellee**

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**On Appeal from County Criminal Court at Law No. 2**
**Harris County, Texas**
**Trial Court Cause No. 101,8648**

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## O P I N I O N

Ibiye Vincent Koko appeals a conviction for misdemeanor assault[1] on the ground that the evidence was legally and factually insufficient to prove that he intentionally and knowingly caused bodily injury to the complainant, his wife, because she testified that her fall from the vehicle was accidental. We affirm.

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[1] A jury found appellant guilty and imposed punishment of 180 days confinement, probated for 2 years, and a $1,000 fine.

When reviewing legal sufficiency, we view the evidence in the light most favorable to the verdict and determine whether a rational trier of fact could have found the elements of the offense beyond a reasonable doubt. *Jackson v. Virginia*, 443 U.S. 307, 318-19 (1979); *Curry v. State*, 30 S.W.3d 394, 406 (Tex. Crim. App. 2000). Under a factual sufficiency analysis, we ask 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. *King v. State*, 29 S.W.3d 556, 563 (Tex. Crim. App. 2000). We will set aside a verdict for factual insufficiency only if it is so contrary to the overwhelming weight of the evidence as to be clearly wrong and unjust. *Wesbrook v. State*, 29 S.W.3d 103, 112 (Tex. Crim. App. 2000). A person commits assault if he intentionally, knowingly, or recklessly causes bodily injury to another, including the person's spouse. TEX. PEN. CODE ANN. § 22.01(a)(1) (Vernon Supp. 2001).[2]

In this case, the jury charge authorized the jury to find appellant guilty of assault if it found that he intentionally or knowingly caused the complainant injury by pulling her from a vehicle with his hands.[3] The record contains evidence of the following facts showing that appellant did so. The complainant testified that she and appellant, her husband, had an argument in their vehicle. Appellant drove the vehicle into the parking lot of a restaurant where they continued to argue. The complainant testified that appellant told her that he was going to put her out of the vehicle if the argument continued.

An employee of the restaurant, Mark Porter, saw: appellant and the complainant appear to be arguing in their vehicle in the parking lot; appellant pulling on the complainant

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[2] A person acts *intentionally* when it is his conscious objective or desire to engage in the conduct or cause the result. TEX. PEN. CODE ANN. § 6.03(a) (Vernon 1994). A person acts *knowingly* when he is aware of the nature of his conduct or that the circumstances exist and that his conduct is reasonably certain to cause the result. *Id.* § 6.03(b).

[3] This was one of several grounds alleged in the indictment. Appellant does not dispute that the complainant was injured when she fell from the vehicle.

while they were still in their vehicle; and appellant get out of the vehicle and forcefully pull the complainant out of the vehicle with his hands. Porter testified that appellant did not try to catch the complainant as she fell to the ground, but instead straddled her body while the complainant was screaming loudly for help. Appellant then got back into the vehicle and left the complainant in the parking lot. As Porter approached the complainant, she indicated to him that her leg was broken and asked him to call the police. This evidence is legally sufficient to show that appellant knowingly and intentionally caused the injury suffered by the complainant.

With regard to factual sufficiency, the complainant testified that she twisted her ankle while she was still in the vehicle and that appellant was trying to help her get out of the vehicle.[4] Although this creates a conflict in the evidence, the proof of guilt is not so weak or greatly outweighed by contrary proof as to render the verdict factually insufficient. Accordingly, appellant's two points of error are overruled, and the judgment of the trial court is affirmed.

/s/ Richard H. Edelman
Justice

Judgment rendered and Opinion filed December 6, 2001.
Panel consists of Justices Yates, Edelman, and Wittig.[5]
Do Not publish — TEX. R. APP. P. 47.3(b).

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[4] However, the investigating police officer testified that the complainant had become less cooperative when she learned that appellant would be arrested.

[5] Senior Justice Don Wittig sitting by assignment.