

**NOT DESIGNATED FOR PUBLICATION**

**STATE OF LOUISIANA**

**COURT OF APPEAL**

**FIRST CIRCUIT**

**2006 KA 2358**

**STATE OF LOUISIANA**

**VERSUS**

**JOSEPH C. COX**

Judgment Rendered: May 4, 2007

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On Appeal from the 21st Judicial District Court  
In and For the Parish of Tangipahoa  
Trial Court No. 106,241, Division "B"

Honorable Bruce C. Bennett, Judge Presiding

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Scott M. Perrilloux  
District Attorney  
Amite, LA  
Jeff Johnson  
Donald J. Wall  
Assistant District Attorneys  
Amite, LA

Counsel for Appellee  
State of Louisiana

Prentice L. White  
Baton Rouge, LA

Counsel for Defendant/Appellant  
Joseph C. Cox

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**BEFORE: PETTIGREW, DOWNING, AND HUGHES, JJ.**

## **HUGHES, J.**

The defendant, Joseph C. Cox, was originally charged by bill of information with aggravated burglary, a violation of La. R.S. 14:60. The defendant entered a plea of not guilty. The State later amended the bill of information to charge the defendant with unauthorized entry of an inhabited dwelling (count one) and second degree battery (count two), violations of La. R.S. 14:62.3 and La. R.S. 14:34.1, respectively. The defendant entered a plea of not guilty to the amended charges. After a bench trial, the defendant was found guilty as charged. The defendant was sentenced to five years imprisonment at hard labor as to both counts. The sentences are to be served concurrently. The defendant now appeals, assigning error as to the sufficiency of the evidence. For the forthcoming reasons, we affirm the convictions and sentences.

### **FACTS**

During the morning hours of December 28, 2002, the defendant forced entry into the trailer home of Paul Davidson. Upon entry, the defendant began physically attacking his estranged wife, Shawna Cox (the victim herein). The victim was alone in one of the bedrooms when the defendant began attacking her. The commotion awakened other occupants of the home, and they ran into the bedroom. At that point, the defendant fled from the home. Davidson was not at home at the time of the offense. Shortly after the defendant left, Davidson arrived home, and the police were contacted. The victim ultimately went to the emergency room, where x-rays were taken. The emergency room record notes abrasions and bruises. The emergency room record and radiology report reflect a diagnosis of “contusion multiple extremities.” The radiology report further states (as to the AP and Lateral T Spine), “Visible on the AP view there is deformity

right first and second lumbar transverse processes with transverse radio lucent line present in both and I suspect these represent acute fractures.”

### ASSIGNMENT OF ERROR

In the sole assignment of error, the defendant argues that the trial court relaxed the rules of evidence by allowing the State to prove the existence of the victim’s injuries based solely on her self-serving testimony. The defendant contends that there is no medical testimony or medical documentation to support the victim’s claim that she had two fractured vertebrae in her back. The defendant argues that it is inconceivable that the victim received serious bodily injury as medical treatment was delayed for several days. The defendant notes that the victim was referred to a specialist but did not receive such treatment. The defendant does not contest the conviction for unauthorized entry of an inhabited dwelling.<sup>1</sup>

The constitutional standard for testing the sufficiency of the evidence, as enunciated in **Jackson v. Virginia**, 443 U.S. 307, 319, 99 S.Ct. 2781, 2789, 61 L.Ed.2d 560 (1979) and adopted by the Legislature in enacting La. Code Crim. P. art. 821, requires that a conviction be based on proof sufficient for any rational trier of fact, viewing the evidence in the light most favorable to the prosecution, to find the essential elements of the crime beyond a reasonable doubt. The **Jackson** standard of review is an objective standard for testing the overall evidence, both direct and circumstantial, for reasonable doubt. When analyzing circumstantial evidence, La. R.S. 15:438 provides that the trier of fact must be satisfied that the overall evidence excludes every

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<sup>1</sup> We note that during the trial the defense focused on developing the defendant’s alibi. The defendant and other defense witnesses testified that he was getting ready for his grandmother’s funeral on the morning in question. The defense attorney argued that the defendant’s alibi eliminated him from being the person who committed the offenses if such offenses were committed. This argument was not presented on appeal.

reasonable hypothesis of innocence. **State v. Graham**, 2002-1492, p. 5 (La. App. 1 Cir. 2/14/03), 845 So.2d 416, 420.

Louisiana Revised Statutes 14:33 defines battery as the intentional use of force or violence upon the person of another. Louisiana Revised Statutes 14:34.1 defines second degree battery as follows:

Second degree battery is a battery committed without the consent of the victim when the offender intentionally inflicts serious bodily injury.

For purposes of this article, serious bodily injury means bodily injury which involves unconsciousness, extreme physical pain or protracted and obvious disfigurement, or protracted loss or impairment of the function of a bodily member, organ, or mental faculty, or a substantial risk of death.

Thus, to convict a person of second degree battery, the State must prove the following elements beyond a reasonable doubt: (1) the intentional use of force or violence upon the person of another; (2) without the consent of the victim; and (3) when the offender intentionally inflicts serious bodily injury. *See State v. Young*, 2000-1437, p. 9 (La. 11/28/01), 800 So.2d 847, 852; *see also State v. Odom*, 2003-1772, p. 6 (La. App. 1 Cir. 4/2/04), 878 So.2d 582, 587-88, *writ denied*, 2004-1105 (La. 10/8/04), 883 So.2d 1026. The challenge presented herein relates to the evidence of the third element. Specifically, the sole issue on appeal is whether the State presented sufficient evidence that the victim suffered serious bodily injury.

The following pertinent testimony was presented at trial. The victim and the defendant were separated at the time of the offenses, and the victim had just moved into Paul Davidson's residence. The victim testified that she was lying on the bed when the defendant entered the bedroom. The defendant shook the victim, pulled her hair, and began striking her in the head with his fist as he screamed at her. The defendant abruptly stopped

hitting the victim and ran out of the room. At that point, the victim promptly locked the back door of the trailer. She went back into the bedroom. As she locked the bedroom door, the defendant burst through the back door. The victim stood with her back against the bedroom door in an attempt to prevent the defendant's entry. The defendant proceeded to burst through the bedroom door. The victim was knocked down to the floor and the defendant began kicking her in her back and head and striking her.

Paul's son, John Davidson, was present at the time of the attack. John testified that he was sleeping on the sofa when he heard "a bunch of banging and stuff" and "Shawna hollering." He jumped up and ran to the bedroom. John hollered at the defendant and turned to seek help from an overnight visitor, Jordan Anthony. The defendant ran out of the back door and left the premises. The victim was "laying on the floor curled up in a circle holding her ribs" when John first ran to the room. Jordan also testified that the victim was crying and hollering after the defendant left. He further stated: "she was just rolling on the floor holding her side and her head and stuff."

Paul arrived just after the defendant left. Paul observed "red spots" on the victim's back. It was stipulated that Lt. Cali was dispatched to the residence and arrived at 8:20 a.m. Paul was unsure as to when the victim sought medical attention. He initially stated that she went to the hospital a couple of days after the incident. He speculated that the victim was initially afraid to go to the doctor. He assumed that the victim's mother took her to the hospital and noted that he was working at the time. During cross-examination, Paul speculated that the victim went to the hospital "[m]aybe the next day or so." Paul noted that the incident occurred over a year before the trial and that he had difficulty remembering details.

The victim testified, with certainty, that she called her mother and went to the emergency room the same evening as the attack. She stated that she delayed going to the hospital because she could not get out of bed after the attack. The victim described the pain that she endured as “horrible.” The emergency room record admitted by the State reflected that the victim was seen on December 28, 2002, the date the offense is alleged to have occurred, at 5:00 p.m. The victim stated that she did not receive the recommended follow-up treatment, with an orthopedic doctor, because she did not have the funds to do so. The victim testified that she still had problems with her back.<sup>2</sup>

The trier of fact is free to accept or reject, in whole or in part, the testimony of any witness. The testimony of a victim or a witness may present sufficient evidence of the element of a battery or whether a victim sustained serious bodily injuries, without any testimony of experts. **State v. Gunnells**, 619 So.2d 192, 201 (La. App. 3 Cir.), *writ denied*, 625 So.2d 1061 (La. 1993). In **State v. Helou**, 2002-2302, pp. 6-8 (La. 10/23/03), 857 So.2d 1024, 1028-29,<sup>3</sup> the supreme court gave the following examples of cases where the State had proven the serious bodily injury element of second degree battery:

Our jurisprudence demonstrates many cases where the State proved the “serious bodily injury” element of second degree battery. Some examples are: 1) **State v. Abercrombia**, 412 So.2d 1027 (La. 1982), where the defendant hit the victim with boards across his head,

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<sup>2</sup> During the trial, the victim specifically stated that the defendant initially used his fist only. After the defendant re-entered, he resumed the attack by kicking her in the back and striking her. The victim was not questioned as to what the defendant struck her with or what kind of shoe the defendant was wearing while he was kicking her. According to the emergency room record, the victim reported the use of a cowboy boot.

<sup>3</sup>In **Helou**, 2002-2302 at pp. 8-9, 857 So.2d at 1029, the supreme court found insufficient evidence of serious bodily injury or extreme physical pain to support a conviction of second degree battery. The court noted that: (1) the evidence therein dealt solely with the amount of blood the victim lost, (2) the State’s direct examination of its witnesses completely avoided the subject of pain, (3) there was no testimony that the victim lost consciousness at any time, (4) the victim initially declined medical help, and, (4) although there was evidence of a medical bill, there was no explanation of what medical services were provided to the victim.

neck, and arm, causing a “deep cut over his right eye;” 2) **State v. Robertson**, 98-0883 (La. App. 3 Cir. 12/9/98), 723 So.2d 500, *writ denied*, 99-0658 (La. 6/25/99), 745 So.2d 1187, where the defendant knocked the victim to the ground and repeatedly kicked and hit her until she “kind of lost her senses for a minute;” the victim had bruises and contusions over the entire extent of her body, which left significant scars and lacerations on her nose; and 3) **State v. Robinson**, 549 So.2d 1282, 1285 (La. App. 3 Cir. 1989), where the defendant stabbed the victim twice with a large, folding knife.

There are other cases which indicate that less substantial injuries may also constitute “serious bodily injury.” See **State v. Young**, 00-1437, pp. 9-10 (La. 11/28/01), 800 So.2d 847, 852-853, where the victim suffered a bloody nose, tenderness in hyoid area below the larynx, and complained of pain at incision in his lower abdominal area. The physician testified that the defendant's act of choking the victim could have resulted in substantial risk of death, and three months after the attack, the victim continued to have throat problems; **State v. Diaz**, 612 So.2d 1019, 1022-23 (La. App. 2 Cir. 1993), where the defendant broke the victim's jaw during a group fight; **State v. Mullins**, 537 So.2d 386, 391 (La. App. 4 Cir. 1988), where a 6 foot tall defendant punched a 5'5" girlfriend, breaking her nose; **State v. Legendre**, 522 So.2d 1249, 1251 (La. App. 4 Cir. 1988), *writ denied*, 523 So.2d 1321 (La. 1988), where the defendant raised the victim over his head and smashed her to the floor, rendering her momentarily immobile and requiring a brief hospitalization followed by outpatient treatment leading to a loss of employment for several weeks; **State v. Accardo**, 466 So.2d 549, 552 (La. App. 5 Cir. 1985), *writ denied*, 468 So.2d 1204 (La. 1985), where a 17-year-old female victim was struck on the head by the defendant with either his fist or a blackjack, causing the side of her face to swell.

In this case, despite the defendant's claim otherwise, the State presented medical documentation to support the victim's claim that she had two fractured vertebrae in her back. The radiology report consists of a diagnosis of “contusion multiple extremities” and a finding of probable acute fractures in the victim's back. The victim testified regarding the pain that she endured and her lack of mobility after the attack.

Viewed in the light most favorable to the State, we find that the evidence was sufficient to prove that the victim sustained extreme physical pain and thus, serious bodily injury within the meaning of the statute. We are convinced that any rational trier of fact could have found that the evidence was sufficient to prove all of the elements of second degree battery. The sole assignment of error is without merit.

**CONVICTIONS AND SENTENCES AFFIRMED.**