

No. 14-24-00874-CR

In the
Court of Appeals
for the
Fourteenth District of Texas
at Houston

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DEBORAH M. YOUNG
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—◆—
No. 18-DCR-084019B

In the 240th District Court
Fort Bend County, Texas

—◆—
RONALD ERVIN PING, II

Appellant

V.

THE STATE OF TEXAS

Appellee
—◆—

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APPELLANT WAIVES ORAL ARGUMENT

STATEMENT REGARDING ORAL ARGUMENT

Appellant waives oral argument.

IDENTIFICATION OF THE PARTIES

Pursuant to TEX. R. APP. P. 38.2(a)(1)(A), a complete list of the names of all interested parties is provided below.

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Trial Judge:

Hon. Surendran K. Pattel

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TO THE HONORABLE COURT OF APPEALS:

STATEMENT OF THE CASE

Appellant was charged by indictment with the first-degree offense of aggravated assault. (CR 13). A jury convicted appellant of the lesser offense of second-degree aggravated assault. (CR 173; RR V 107). The court sentenced appellant to 10 years' confinement in the Institutional Division of the Texas Department of Criminal Justice. (CR 213-4; RR VI 64).

STATEMENT OF FACTS

Appellant and Heather Henson met in February 2018, when they brought their children to the same bus stop. (RR IV 29). On Labor Day weekend, the couple attended a concert together. (RR IV 35). They were both drinking before the concert. (RR IV 36, 69-71). Henson denied drinking at the concert but could not recall how she got from the concert to their Uber when the concert ended. (RR IV 72). When they got home around 11:00 p.m., they continued to drink and got into an argument. (RR IV 37, 73-4). In response, appellant told Henson he was going to pack his belongings and leave. (RR IV 37-8, 76). Henson then responded that appellant better not leave his beer that was in the garage refrigerator. (RR IV 39-40, 76).

Although Henson's memory was not clear, she recalls going to the garage to get the beer¹. (RR IV 40). She opened the refrigerator, grabbed the beer, and turned. (RR IV 40). Henson testified that she has no memory after that. (RR IV 40). When Henson came to, she was face down on the concrete and she did not know where she was. (RR IV 41). The left side of Henson's face was "pounding pain." (RR IV 41). Henson "stumbled" inside and called 911. (RR IV 42-3).

Despite not having any memory of what occurred, Henson reported that her "boyfriend had hit [her] with his fist." (RR IV 44). Henson recounted her injuries as broken bones in her face that required stitches and staples. (RR IV 46-7). She later had surgery. (RR IV 55). It took her one to one and half months to recover. (RR IV 55). To this day, Henson experiences numbness on the side of her face and occasional locking of her jaw. (RR IV 56).

Appellant testified that he and Henson had a good relationship unless Henson was drinking. (RR V 16). In June 2018, prior to this incident, the police were called to Henson's home. (RR V 16). Henson reportedly attacked appellant when she was intoxicated. (RR V 17). Neither appellant nor Henson were arrested as a result of this call. (RR V 17).

Appellant agreed that both he and Henson were drinking before and on their way to the concert. (RR V 20-2). However, appellant refuted Henson's claim that she

¹ Henson told the responding deputy that appellant was taking beer she had purchased, she had a problem with that, and she went to take the beer from appellant. (RR IV 61, 79-80).

did not drink at the concert, testifying that Henson consumed so much alcohol that she “passed out” in her seat. (RR V 23-4). Appellant had to carry Henson out of the concert and to their Uber, where she slept the entirety of the ride home. (RR V 25-7).

When they arrived home and were getting ready for bed, appellant “could tell things were about to change.” (RR V 29). Appellant testified that Henson was angry but there was no argument. (RR V 29-30). Appellant thought Henson was asleep on the porch and he began putting his things in his car to leave. (RR V 29-20). Before leaving, appellant went into the garage to get his case of beer. (RR V 31). Henson was there and began striking him with her hands, saying “he is just like every other man.” (RR V 33). Henson stumbled over a pile of wood on the garage floor. (RR V 35). At that point, appellant turned and left the garage. (RR V 36). When he turned around, Henson was starting to sit up and did not exhibit any injuries. (RR V 36-7). Appellant denied hitting Henson. (RR V 41).

Appellant was charged by indictment with the first-degree offense of aggravated assault. (CR 13). A jury convicted appellant of the lesser offense of second-degree aggravated assault, presumably rejecting that appellant used or exhibited a deadly weapon during the offense. (CR 173; RR V 107). The court sentenced appellant to 10 years’ confinement in the Institutional Division of the Texas Department of Criminal Justice. (CR 213-4; RR VI 64).

SUMMARY OF THE ARGUMENT

The evidence is insufficient to sustain appellant's conviction for aggravated assault. The State failed to establish that the complainant's injuries rose to the level of "serious bodily injury" because none of the injuries created a "substantial risk of death," or "cause[d] death, serious permanent disfigurement, or protracted loss or impairment of the function of any bodily member or organ."

APPELLANT'S POINT OF ERROR

The evidence is insufficient to establish that the complainant suffered serious bodily injury.

Standard of Review

The due process guarantee of the Fourteenth Amendment requires that a conviction be supported by legally sufficient evidence. *Jackson v. Virginia*, 443 U.S. 307, 315-16, 99 S.Ct. 2781, 61 L.Ed.2d 560 (1979); *Brooks v. State*, 323 S.W.3d 893, 917 (Tex. Crim. App. 2010). In a legal-sufficiency review, an appellate court considers all the admitted evidence and views it in the light most favorable to the verdict. *Harrell v. State*, 620 S.W.3d 910, 913-14 (Tex. Crim. App. 2021). This standard recognizes it is the jury's prerogative to resolve conflicts in the testimony, weigh the evidence, and draw reasonable inferences from basic facts to ultimate facts. *Id.* at 914. An inference is a conclusion reached by considering other facts and deducing a logical consequence from them. *Anderson v. State*, 416 S.W.3d 884, 888 (Tex. Crim. App. 2013). The jury

may draw reasonable inferences from the evidence as long as each inference is supported by the evidence. *Carter v. State*, 620 S.W.3d 147, 150 (Tex. Crim. App. 2021). But a jury's verdict cannot rest on speculation - mere theorizing or guessing about the possible meaning of the evidence presented, as opposed to reasonable inferences that can be drawn from the evidence. *Anderson*, 416 S.W.3d at 888.

Relevant Law

The elements of the offense of second-degree aggravated assault require evidence that the actor caused serious bodily injury to another or used or exhibited a deadly weapon during the commission of the assault². TEX. PENAL CODE § 22.02(a)(1), (2). The Penal Code defines “bodily injury” as “physical pain, illness, or any impairment of physical condition” and “serious bodily injury” as “bodily injury that creates a substantial risk of death or that causes death, serious permanent disfigurement, or protracted loss or impairment of the function of any bodily member or organ.” TEX. PENAL CODE § 1.07(a)(8), (46). Whether an injury constitutes serious bodily injury is determined on a case-by-case basis. *Miller v. State*, 312 S.W.3d 209, 213 (Tex. App.--Houston [14th Dist.] 2010, pet. denied) (citing *Moore v. State*, 739 S.W.2d 347, 349 (Tex. Crim. App. 1987)). The relevant inquiry is the degree of risk posed and the disfiguring and impairing quality of the injury as inflicted, not after the effects have been

² They jury's determination that appellant was not guilty of first-degree aggravated assaulted provides support that the jury rejected the State's claim that appellant used or exhibited a deadly weapon during the assault.

ameliorated or exacerbated by medical treatment. *Blea v. State*, 483 S.W.3d 29, 34-5 (Tex. Crim. App. 2016).

Argument

There is no doubt that the complainant suffered bodily injury and still suffers from the emotional toll of the experience. However, the State failed to establish that appellant caused Henson to suffer injuries that created “a substantial risk of death” or caused “death, serious permanent disfigurement, or protracted loss or impairment of the function of any bodily member or organ.” TEX. PENAL CODE § 1.07(a)(46).

Henson testified that she broke “multiple” bones in her face. (RR IV 46-7). Emergency treatment included stitches and staples. (RR IV 46-7; State’s exhibit 60). After consulting with another physician, Henson had surgery to place metal plates in her face³. (RR IV 55). It was unclear whether this was for medically necessary reasons. The emergency room physician who first treated Henson, Dr. Sneed, speculated that any injury to the face could possibly require surgery because “any injury to the face could lead to disfigurement if untreated.” (RR IV 138-9). However, no medical professional testified that Henson’s injuries would lead to permanent disfigurement if surgery were not performed. Henson claimed to still endure occasional numbness on the left side of her face and locking of her jaw. (RR IV 56).

³ The physician who performed this surgery did not testify, nor were Henson’s medical records from the surgery admitted into evidence.

Henson's medical records reveal that she was checked in at 1:55 a.m. and was discharged at 5:25 a.m. (State's exhibit 60). Her "chief complaint" was noted as "pt called EMS after altercation with boyfriend, pt doesn't remember what happend, pt woke up with laceration to left eyebrow and right ear, pt c/o jaw pain. pt does not know if she lost consciousness." (State's exhibit 60). Henson was diagnosed with a "closed fracture⁴ of left zygomatic arch," a "[f]racture of orbital wall," and 1 cm lacerations of both the left eyebrow and scalp. (State's exhibit 60; RR IV 134). She received stitches and staples to close her wounds. (State's exhibit 60). Henson did not suffer any injuries to her brain. (RR IV 138).

The State's evidence failed to prove that Henson's injuries rose to the level of "serious bodily injury." Lasting effects from an assault, alone, are not sufficient to support a finding of serious bodily injury. *See, e.g., Sizemore v. State*, 387 S.W.3d 824, 828 (Tex. App.--Amarillo 2012, pet. ref'd) ("Simply that an injury causes scarring is not sufficient, on its own, to establish serious permanent disfigurement"); *see also Wade v. State*, 594 S.W.3d 804, 811 (Tex. App.--Austin 2020, pet. granted), *aff'd*, 663 S.W.3d 175 (Tex. Crim. App. 2022) ("Rather, '[t]here must be evidence of some significant cosmetic deformity caused by the injury.'") (quoting *Hernandez v. State*, 946 S.W.2d 108, 113 (Tex. App.--El Paso 1997, no pet.)).

⁴ A closed fracture is defined as one that does not penetrate the skin.

Further, even if it were established that Henson's surgery was medically necessary, the necessity of surgery alone is insufficient to establish serious bodily injury. *Webb v. State*, 801 S.W.2d 529, 533 (Tex. Crim. App. 1990). In *Black v. State*, the complainant was shot in the thigh during an aggravated robbery and required surgery. 637 S.W.2d 923, 924-25 (Tex. Cr. App. 1982). He spent three days in the hospital recovering from the surgery, and the leg took two to three months to heal. *Id.* At 925. Because there was no evidence that the complainant had any loss of use of the leg, the Court of Criminal Appeals held that the evidence was insufficient to prove serious bodily injury. *Id.* at 926.

Dr. Sneed diagnosed Henson with a concussion because of her memory loss. (RR IV 142, 144). The defense countered that Henson drank heavily that night and had a history of drinking until she blacked out. (RR IV 80). Regardless, memory loss is not indicative of serious bodily injury. In *Sanchez v. State*, the victim testified that as a result of a fight with the defendant he lost consciousness and that he was suffering from amnesia because he could not remember what had happened between the time he was beaten up and the time he awoke in the hospital. 543 S.W.2d 132, 133 (Tex. Cr. App. 1976). He also could not remember any parts of the play he had seen before the fight. *Id.* The Court of Criminal Appeals held that the victim's testimony regarding his temporary amnesia and the admitted medical records were insufficient to show a protracted loss or impairment of any bodily member or organ. *Id.* at 134.

Likewise, Henson's memory loss surrounding the assault is insufficient to prove a protracted loss or impairment of the function of an organ. *See Webb*, 801 S.W.2d at 533 (Victim's testimony of loss of memory about events after being struck on head by rock during robbery, including lack of recall concerning talking to police and remembering exact time of day his photograph was taken, was not sufficient to show protracted loss or impairment of function of an organ to establish "serious bodily injury" necessary to support defendant's conviction for aggravated robbery).

CONCLUSION

The evidence is insufficient to establish that the complaint suffered serious bodily injury. She was discharged to home from the emergency room within four hours of her admittance and was classified as "ambulatory" and "stable." (State's exhibit 60). There is no evidence that Henson suffered from any "protracted loss or impairment of any bodily member or organ." As such, appellant's conviction should be reversed and the cause remanded for a new trial. In the alternative, appellant's conviction should be reformed to the lesser included offense of assault the cause remanded for a new punishment hearing.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

In accordance with the Texas Rules of Appellate Procedure, I hereby certify that appellant's brief, filed on April 13, 2025, has 2,814 words based upon a word count under MS Word.

Mandy Miller
Mandy Miller

CERTIFICATE OF SERVICE

Appellant has transmitted a copy of the foregoing instrument to counsel for the State of Texas via eservice on April 13, 2025, at:

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Mandy Miller
Mandy Miller

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