IN THE COURT OF CRIMINAL APPEALS OF TEXAS

NO. PD-0585-21

DANIELLE LEIGH EDWARDS, Appellant

v.

THE STATE OF TEXAS

ON APPELLANT'S PETITION FOR DISCRETIONARY REVIEW FROM THE THIRD COURT OF APPEALS CALDWELL COUNTY

SLAUGHTER, J., delivered the opinion for a unanimous Court.

O P I N I O N

Can a mother who repeatedly uses cocaine while breastfeeding her baby be found guilty of reckless injury to a child for causing serious mental deficiency, impairment, or injury when the baby becomes addicted to cocaine and suffers withdrawals?[1] It is certainly

[1] *See* TEX. PENAL CODE § 22.04(a)(2).

possible. But the State must provide the jury with sufficient evidence to prove that the cocaine, addiction, and/or withdrawal actually caused the baby serious mental deficiency, impairment, or injury. Because the State in this case failed to provide such evidence, we reverse the court of appeals' judgment and remand the cause to that court for further proceedings.

I. Background

A. Facts and Trial on the Merits

Baby L.B. was born on June 23, 2017, to her mother, Appellant Danielle Edwards, and her father, Morris Branton. At some point,[2] Child Protective Services ("CPS") opened an investigation into Appellant for suspected child abuse. During the course of the investigation, in June 2018, Appellant tested positive for cocaine[3] and admitted to CPS that she had used cocaine several times in the past two weeks. In response, CPS removed L.B. from Appellant's care and requested that a hair-follicle test be conducted on L.B. to evaluate whether she had been exposed to cocaine.

The hair-follicle test, which identifies any drugs consumed within the past 90 days, revealed that L.B. had a significant amount of cocaine and cocaine metabolites in her system, with results exceeding 20,000 picograms per milligram, the maximum reportable amount. Appellant was subsequently indicted for injury to a child for recklessly causing

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[2] The record is unclear as to when CPS opened a child abuse investigation of Appellant. In addition to L.B., Appellant had two other children. It is unclear which child was the victim of the abuse allegations.

[3] The record is also unclear as to why Appellant took a drug test.

L.B. a "serious mental deficiency, impairment, or injury" by "allowing [L.B.] access to cocaine and the infant was able to ingest the cocaine[.]" *See* TEX. PENAL CODE § 22.04(a)(2).

At Appellant's trial, the State called Bruce Jeffries, the owner of a drug screening and assessment center. Jeffries testified that he was "shocked" by the level of cocaine in L.B.'s system, which was "indicative of an addict doing it all the time." He further testified about the possible effects and risks of a baby's ingestion of high levels of cocaine. Jeffries explained that the amount of cocaine L.B. had consumed "is going to cause, you know, withdrawals." He further testified that potential short-term effects "could" include "loss of appetite, psychological effects, your heart racing." He also noted that there is the possibility of overdose and death. With respect to long-term effects, Jeffries explained that cocaine usage "could" lead to seizures, possible hardening of the right side of the heart, an increased risk of heart attack, and possible mental or physical developmental delays.

Jane Davis, L.B.'s guardian beginning June 21, 2018, testified about L.B.'s demeanor following her removal from Appellant's care. Davis described L.B. as "very small for her age . . . very clingy, [and] very fussy." L.B. was evaluated for developmental delays but no delays were ever noticed by Davis or L.B.'s pediatrician. Davis testified that she had not noticed any developmental delays in L.B. at the time of trial in October 2019.

Branton, L.B.'s father, testified that before L.B. was removed by CPS, he, Appellant, and another person lived in the home with L.B. He explained that Appellant was L.B.'s primary caregiver and would breastfeed her. To Branton's knowledge, the friend who lived with them did not take care of L.B. and did not expose L.B. to cocaine.

After the conclusion of evidence, the jury convicted Appellant of the charged offense, and the trial court sentenced her to twelve years' imprisonment.

B. On Appeal

On direct appeal, Appellant argued that the evidence was insufficient to support the jury's finding that L.B. suffered a "serious mental deficiency, impairment, or injury." *Edwards v. State*, No. 03-20-00138-CR, 2021 WL 2692350, at *2 (Tex. App.—Austin July 1, 2021) (mem. op., not designated for publication). The court of appeals rejected this argument, holding that the evidence was sufficient to prove that Appellant "recklessly caused L.B. to ingest an amount of cocaine sufficient to make her addicted and experience withdrawal and, therefore, caused L.B. to suffer a serious mental deficiency, impairment, or injury." *Id.* at *4.

The court of appeals recognized that the Penal Code does not define the phrase "serious mental deficiency, impairment, or injury," so the court instead relied on the ordinary dictionary definitions for those terms as cited in *Ex parte Hammons*, 628 S.W.3d 335, 337 (Tex. App.—Waco 2021), *vacated on other grounds*, 631 S.W.3d 715 (Tex. Crim. App. 2021). *Id.* at *2. The court also pointed to *Stuhler v. State*, 218 S.W.3d 706 (Tex. Crim. App. 2007), and *Franco v. State*, No. 13-14-00108-CR, 2016 WL 3389967 (Tex. App.—Corpus Christi-Edinburg June 16, 2016, no pet.) (mem. op., not designated for publication). *Id.* at *3. In both cases, the child-victim was diagnosed with post-traumatic stress disorder ("PTSD"), which served as the underlying diagnosis for the serious mental deficiency, impairment, or injury. *Id.* Finally, the court pointed to the National Institute on Drug Abuse's ("NIDA") definition of addiction "as a chronic, relapsing disorder

characterized by compulsive drug seeking . . . and long-lasting changes in the brain,"[4] and *Tarr v. Lantana Southwest Homeowners' Association*,[5] wherein the court previously recognized that drug addiction may constitute an impairment in the context of disability law. *Id.* Ultimately, the court held that the evidence of L.B.'s cocaine addiction and withdrawals satisfied the element of serious mental deficiency, impairment, or injury, and it upheld Appellant's conviction. *Id.* at *4.

We granted Appellant's petition for discretionary review to determine whether "the Court of Appeals erred in holding that evidence of a high level of cocaine in a child's body alone is sufficient to prove that the child suffered 'serious mental deficiency, impairment, or injury,' as required for conviction of injury to a child."

II. Standard of Review

In assessing the sufficiency of the evidence to support a conviction, we consider the evidence in the light most favorable to the verdict and determine whether, based on the evidence and reasonable inferences therefrom, a rational juror could have found the essential elements of the crime beyond a reasonable doubt. *Jackson v. Virginia*, 443 U.S. 307, 319 (1979); *Whatley v. State*, 445 S.W.3d 159, 166 (Tex. Crim. App. 2014). "This familiar standard gives full play to the responsibility of the trier of fact fairly to resolve conflicts in the testimony, to weigh the evidence, and to draw reasonable inferences from

[4] National Institute on Drug Abuse, *The Science of Drug Use and Addiction: The Basics* (July 2, 2018), https://www.drugabuse.gov/publications/media-guide/science-drug-use-addiction-basics (last visited January 30, 2023).

[5] No. 03–14–00714–CV, 2016 WL 7335861 (Tex. App.—Austin Dec. 16, 2016, no pet.) (mem. op., not designated for publication), *judgment withdrawn, appeal dismissed*, No. 03-14-00714-CV, 2017 WL 1228870 (Tex. App.—Austin Mar. 30, 2017, no pet.) (mem. op., not designated for publication).

basic facts to ultimate facts." *Jackson*, 443 U.S. at 319. A proper review of evidentiary sufficiency considers the cumulative force of the evidence. *See Wise v. State*, 364 S.W.3d 900, 903 (Tex. Crim. App. 2012).

When considering a claim of evidentiary insufficiency, a reviewing court does not sit as the thirteenth juror and may not substitute its judgment for that of the factfinder by reevaluating the weight and credibility of the evidence. *Isassi v. State*, 330 S.W.3d 633, 638 (Tex. Crim. App. 2010). The jury is permitted to draw reasonable inferences from the evidence adduced at trial. *Metcalf v. State*, 597 S.W.3d 847, 855 (Tex. Crim. App. 2020). Additionally, the jury may use common sense, common knowledge, personal experience, and observations from life when drawing inferences. *Acosta v. State*, 429 S.W.3d 621, 625 (Tex. Crim. App. 2014). However, "juries are not permitted to come to conclusions based on mere speculation or factually unsupported inferences or presumptions." *Hooper v. State*, 214 S.W.3d 9, 15 (Tex. Crim. App. 2007).

We measure the sufficiency of the evidence against the hypothetically-correct jury charge, defined by the statutory elements as modified by the charging instrument. *Malik v. State*, 953 S.W.2d 234, 240 (Tex. Crim. App. 1997). The hypothetically-correct jury charge is one that accurately states the law, is authorized by the indictment, does not increase the State's burden of proof, and adequately describes the offense with which the defendant is charged. *Id.*

III. Analysis

Appellant was indicted for "recklessly caus[ing] serious mental deficiency, impairment, or injury to [L.B.], a child 14 years of age or younger, by allowing [L.B.]

access to cocaine and the infant was able to ingest the cocaine," in violation of Texas Penal Code section 22.04(a)(2). The only question before us in this proceeding is the sufficiency of the evidence to show that L.B's ingestion of cocaine caused "serious mental deficiency, impairment, or injury."

A. There is no Texas Penal Code definition for "serious mental deficiency, impairment, or injury," so the jury was free to use the common and ordinary meanings of the terms.

As the court of appeals noted in its analysis, there is no statutory definition for "serious mental deficiency, impairment, or injury" within the Texas Penal Code. When there is no definition or technical meaning provided for a word or phrase, the terms are typically given their plain and ordinary meaning. *See* TEX. GOV'T CODE § 311.011(a) ("Words and phrases shall be read in context and construed according to the rules of grammar and common usage."); *see also State v. Bolles*, 541 S.W.3d 128, 138 (Tex. Crim. App. 2017) (in context of sufficiency review, stating that "'jurors may freely read [undefined] statutory language to have any meaning which is acceptable in common parlance'") (quoting *Kirsch v. State*, 357 S.W.3d 645, 650 (Tex. Crim. App. 2012) (internal quotation marks omitted)). "'In determining [the] plain meaning' of an undefined statutory term, 'we can consult dictionary definitions, . . . [and we must] read words in context, [and] apply[ ] rules of grammar[.]'" *Id.* (quoting *Ex parte Ingram*, 533 S.W.3d 887, 894 (Tex. Crim. App. 2017)).

The statutory phrase at issue here, "serious mental deficiency, impairment, or injury," uses terms with common meanings that are readily understandable by jurors. The meanings of "serious," "mental," and "injury" are so obvious that we need not resort to

dictionary definitions. The term "deficiency" by itself means "the quality or state of being deficient," which in turn means "lacking in some necessary quality or element," or "not up to a normal standard or complement." Merriam-Webster's Collegiate Dictionary (11th ed. 2020). "Impairment" means "diminishment or loss of function or ability." *Id.* Webster's Collegiate Dictionary also defines the phrase "mental deficiency" as "a deficiency in cognitive functioning, *specifically*, intellectual disability."[6] *Id.*

With the foregoing statutory terms and their ordinary meanings in mind, we now turn to consider the evidence at hand to evaluate whether any rational juror could have found beyond a reasonable doubt that the statutory element of "serious mental deficiency, impairment, or injury" was satisfied here.

B. The evidence was legally insufficient to establish "serious mental deficiency, impairment, or injury" as those terms are commonly understood.

Even viewing the evidence in a light most favorable to the verdict and allowing for the drawing of reasonable inferences by the jury, the State's evidence was insufficient to demonstrate that L.B. suffered a serious mental deficiency, impairment, or injury as a result of ingesting cocaine through Appellant's breastmilk.

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[6] While having no binding significance to the outcome of the present case, it is worth nothing that some of the phrases contained within "serious mental deficiency, impairment, or injury" are defined in other areas of Texas Law. *See, e.g.*, TEX. HEALTH & SAFETY CODE § 614.001(6) (defining "mental impairment"); TEX. HEALTH & SAFETY CODE § 612.001 art. II(g) (defining "mental deficiency"); TEX. FAM. CODE § 261.001(1)(A) (defining "mental or emotional injury"). While we take note of these provisions, as we have stated above, the jury in this case was ultimately free to apply any reasonable meanings for the ordinary statutory terms. Therefore, we do not adopt any of these more precise or technical definitions for use in this context.

1. The evidence was insufficient to prove that L.B.'s ingestion of cocaine caused her to suffer from any kind of mental deficiency, impairment, or injury.

It is unquestionable that the State produced sufficient evidence to prove that L.B. had ingested a large amount of cocaine. The hair-follicle test and other testimony clearly established that fact. The State's witness also established that the amount of cocaine in L.B.'s system "was indicative of an addict" and would result in withdrawals. Thereafter, however, the witness testified in general or hypothetical terms about how ingestion of cocaine *could* be harmful. For example, he offered that "*potential*" short-term effects "*could*" include "loss of appetite, psychological effects, [or] your heart racing." He also listed the "*possibility*" of overdose and death. And then long-term effects "*could*" include seizures, the "*possible*" hardening of the right side of the heart, an increased "*risk*" of heart attack, and "*possible*" mental or physical developmental delays. No one testified that L.B. actually suffered from any of these theoretical side effects.

The only testimony about the health, well-being, and behavior of L.B. was from L.B.'s guardian, who testified that L.B. was small for her age and was excessively fussy and clingy. No one testified that these factors demonstrated that L.B. suffered from a "serious mental deficiency, impairment, or injury." In fact, testimony from L.B.'s guardian established that L.B. was not experiencing any developmental delays. Accordingly, the State presented no evidence that the cocaine L.B. ingested caused her "serious mental deficiency, impairment, or injury."

2. The evidence was insufficient to prove that L.B.'s addiction to cocaine or withdrawals therefrom amounted to a serious mental deficiency, impairment, or injury.

The State nevertheless contends that the nature of drug addiction and its harmful effects are such common knowledge that the jurors here could have simply inferred the existence of serious mental deficiency, impairment, or injury, notwithstanding the lack of any testimony directly addressing that issue. We disagree. While jurors may have some degree of personal knowledge regarding drug addiction, under these circumstances, and on these facts, the jurors would have had to speculate in finding that L.B.'s exposure to cocaine and any resulting withdrawal symptoms actually caused her to suffer "serious mental deficiency, impairment, or injury." That is to say, the average juror would not have a common-sense understanding of precisely how drug addiction and withdrawals affect a child's development, cognitive functioning, or mental health. Therefore, jurors could not, merely from the evidence presented here, draw a reasonable inference about the existence of a serious mental deficiency, impairment, or injury. *See Hooper*, 214 S.W.3d at 16 ("juries are permitted to draw multiple reasonable inferences from the evidence (direct or circumstantial), but they are not permitted to draw conclusions based on speculation"). Ultimately, we conclude, in view of the particular facts presented, that the State failed to prove that L.B. suffered a serious mental deficiency, impairment, or injury.

C. The cases relied upon by the court of appeals are readily distinguishable.

In upholding Appellant's conviction, the court of appeals relied upon this Court's opinion in *Stuhler* and an unpublished decision of the Thirteenth Court of Appeals in *Franco*. *Edwards*, 2021 WL 2692350, at *3. However, these cases are readily distinguishable from the facts before us. In both cases, the child-victim suffered PTSD as

a result of physical abuse. There was no challenge in either case to the sufficiency of the evidence to show that PTSD was a "serious mental deficiency, impairment, or injury." *Stuhler*, 218 S.W.3d at 713 n.5; *Franco*, 2016 WL 3389967, at *6. Further, in both cases, the State called therapists and psychologists who had worked with the children to testify about the connection between the trauma suffered and the present PTSD diagnosis. *Stuhler*, 218 S.W.3d at 713; *Franco*, 2016 WL 3389967, at *4. Thus, the evidentiary link proving that the physical abuse caused serious mental deficiency, impairment, or injury to the child-victim was established. Therefore, neither *Stuhler* nor *Franco* are on point for the issue of whether addiction and withdrawal symptoms constitute serious mental deficiency, impairment, or injury, and the court of appeals' reliance on them is misplaced.

The court of appeals also pointed to NIDA's definition of drug addiction as a "chronic" condition with "long-lasting changes in the brain,"[7] as well as *Tarr*'s recognition that drug addiction may constitute an impairment within disability law. *Edwards*, 2021 WL 2692350, at *3. However, no such definition provided by NIDA (or any scientific definition of drug addiction, for that matter) was presented to the jury and was thus not available for the jury's consideration. Further, the holdings in *Tarr*, which relate to disability law, lack precedential value for the present case. We do not find these sources persuasive.

IV. Conclusion

[7] National Institute on Drug Abuse, *supra*.

Even viewing the record in a light most favorable to the prosecution, there was legally insufficient evidence to support Appellant's conviction for injury to a child; namely, the element that L.B. suffered serious mental deficiency, impairment, or injury. Therefore, we reverse the judgment of the court of appeals.

Regarding the appropriate remedy under these circumstances, it is at least theoretically possible that Appellant's conviction could be reformed to some lesser-included offense. *See Thornton v. State*, 425 S.W.3d 289, 300 (Tex. Crim. App. 2014) (discussing circumstances under which, after finding the evidence insufficient on a greater-inclusive offense, an appellate court should reform a conviction to a lesser-included offense). Because the parties have not had the opportunity to brief this issue, and the court of appeals has not had occasion to consider it, we remand the cause for further proceedings consistent with this opinion.

As a final note, in reaching our decision on this matter, we emphasize that our holding should not be interpreted as categorically indicating that a "serious mental deficiency, impairment, or injury" can never be proven for a child-victim who ingests a large amount of drugs and/or who experiences drug addiction and withdrawal. Rather, this holding is based on the evidentiary gap *in this case* with regards to drug ingestion, addiction, and withdrawal causing a serious mental deficiency, impairment, or injury to L.B. Limiting our holding to the facts before us, we conclude that the State's evidence here failed to meet the rigorous demands of the standard set forth in *Jackson*. Therefore, the court of appeals' judgment upholding Appellant's conviction must be reversed.

DELIVERED: February 15, 2023

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