

Opinion issued February 27, 2018



In The
Court of Appeals
For The
First District of Texas

NO. 01-16-00924-CR

AIDE ARACELY ESTRELLA, Appellant
V.
THE STATE OF TEXAS, Appellee

On Appeal from the 240th District Court
Fort Bend County, Texas
Trial Court Case No. 13-DCR-065021

MEMORANDUM OPINION

Aide Aracely Estrella was convicted of felony injury to a child for failing to provide medical care for a burn suffered by her step-son, J.E.¹ She was sentenced

¹ See TEX. PENAL CODE § 22.04(a).

to five years' confinement. Estrella challenges the sufficiency of the evidence supporting her conviction. We affirm.²

Background

A nine-year-old boy rang the doorbell of the home of J.S., pseudonymously referred to as Jane. The temperature was in the 30s, yet the boy was wearing only shorts and a long-sleeved shirt. He was not wearing socks or shoes. Jane described his startlingly poor physical condition, testifying that she had “never seen anything like that before.” His bare legs were “skinny as a rail.” One leg looked like it was “knocked out of joint or broken or something.” The boy’s skin was not a healthy color, or even the color of red that would be expected from being exposed to cold weather; instead, it was “salmon colored.” She had “never seen that color skin” on a person. The boy’s eyes were swollen almost shut, and his eye sockets protruded out past his cheek bones. Jane brought J.E., pseudonymously referred to as Jason, into her house. She immediately fed him, and he would ask for more food as he finished each serving. Jason was very hungry.

Jane called a neighbor over, and they called for police and emergency medical assistance. The police and EMS personnel arrived quickly. EMS notes

² Estrella also was convicted of reckless injury to a child for failing to provide her step-son adequate nourishment. The jury assessed punishment at 10 years’ confinement for that offense but recommended that the sentence be suspended and that she be granted community supervision. She does not appeal that conviction.

Estrella was tried alongside her husband, who is J.E.’s father. He also was convicted of two counts of injury to a child. He is not a party to this appeal.

state that Jason was emaciated with atrophy to both arms and both legs, distension and rigidity in his abdomen, and swelling in his face and eye orbits. Jason had trouble supporting his own weight and could not walk well. His hair was thin, and he had bruising and scars across his body. Jason seemed very hungry.

A scar on Jason's hip, according to emergency medical personnel who evaluated him at Jane's house, indicated that he had suffered an extensive, painful burn that would have required immediate medical attention. Jason had a second burn scar on his arm.

Jason was taken to Texas Children's Hospital in Katy, where he was weighed, examined, and photographed. Jason, at age nine, weighed 52 pounds. A doctor testified that was the average weight for a six-year-old child.³

The examination photos were admitted into evidence. They show a young boy with extremely thin legs, no muscle development on his arms or legs, and protruding knee joints. His underwear hung from his body with gapes in the leg holes. His stomach was distended. And his eye sockets were swollen to the point that they protruded out beyond his cheek bones.

The physical exam and photos also revealed an older burn to Jason's arm and hip. The hip burn was described as "extensive" by medical personnel. It wrapped around his groin area. It covered an area from his hip, traveling down

³ There was evidence that Jason weighed a similar amount when he visited a pediatrician in Brownsville at age six.

between his legs, and then up the other side of his body. The burn scar was a combination of red and dark red, almost black colors. Dr. Isaac, the Texas Children's pediatrician who took over Jason's care after he was transferred from the emergency center, testified that the burn pattern indicated that an accelerant had been used. The accelerant appeared to have pooled in the groin crease and flowed outward when it ignited. The extensiveness of the scarring indicated to Dr. Isaac that Jason had not received appropriate medical care for his hip burn.

After being evaluated, Jason was admitted to the hospital with a diagnosis of chronic malnutrition resulting from child abuse. A chest x-ray revealed that he also had a ruptured lung, and additional testing revealed that he had a foreign body lodged in one of his feet. Medical staff attended to his medical needs and monitored his health as food was reintroduced. While at Texas Children's, he gained 11 pounds in nine days.

Trial testimony established that Jason had been living with his father and step-mother, Estrella (the defendant-appellant), in the house across the street from Jane. Jason also lived with five step- and half-siblings. He was the only child in the home that was not the biological child of his step-mother.

Jason testified that he began to be treated differently after Estrella suspected him of taking one of her rings. She burned his arm and his hip as punishment for taking the ring. There was evidence Jason's father and Estrella took him to Mexico

the following day for medicine for the burns. Around the same time, Estrella began confining him to a locked closet without adequate food or water.

There was evidence that the other children in the home were treated differently. All the other children had bedrooms and beds, but Jason testified that he slept in a locked closet. The police inspected the home and found that the bedroom upstairs where Jason's parents said he slept was barer than the other bedrooms and did not have a mattress on the bed frame. There were dozens of pictures of the other children throughout the home and virtually none of Jason. Additionally, all the other children attended public school, but Jason was "homeschooled." The other children were on Medicaid and saw local physicians when they became ill, but, according to his parents, Jason did not have Medicaid and would be taken to Mexico for any medical care.⁴

The children were not fed equally either. All the other children testified that they ate regularly, but Jason testified that he was frequently denied food and water. There was evidence that the parents kept the kitchen pantry locked and that every child except Jason knew where the key was stored. The parents claimed that Jason's food intake was more closely monitored because he had undiagnosed food

⁴ There was conflicting evidence on whether Jason had Medicaid. Jason's father testified that he did not have Medicaid even though the other children did. Estrella testified that she was informed Jason's Medicaid would be discontinued because he was not closely related to her and, in anticipation of that discontinuation, she canceled his coverage. But there was other evidence that Jason had Medicaid at all relevant times, including the day he was burned.

allergies and had recently eaten an unknown item that caused the face swelling seen in the medical photographs. But the doctors who examined Jason at Texas Children's Hospital testified that there was no medical evidence that Jason had an allergic reaction as the parents described.

Jason testified to what he believed caused his face swelling. He had become so thirsty the week before he escaped the house that he drank his own urine. His face swelled up, Estrella saw it, and she moved him from the closet to the upstairs bedroom. A few days later, while Estrella and his father were away shopping, he escaped out the bedroom window and walked to Jane's house. Jason told emergency medical personnel that he had not eaten for two days when he escaped.

Following Jason's recovery at Texas Children's Hospital, the State removed him from the family home. He lived with foster parents but eventually moved back to Brownsville to live with his biological mother.

Estrella was charged with two injury-to-a-child offenses, both by omission: one for withholding nutrition and one for failing to provide medical care for the hip burn Jason suffered months before his escape. This appeal is limited to her conviction related to the burn.

Statutory Offense of Injury to a Child by Omissions

A person commits the offense of injury to a child by omission if, having a legal duty to act, she "intentionally, knowingly, or recklessly by omission, causes

to a child . . . serious bodily injury . . . or bodily injury.” TEX. PENAL CODE § 22.04(a)(1), (3); *see id.* § 22.04(b); *see also Jefferson v. State*, 189 S.W.3d 305, 312 (Tex. Crim. App. 2006). The offense is a first-degree felony when the mental state is intentionally or knowingly and the result is serious bodily injury. TEX. PENAL CODE § 22.04(e).

Injury to a child is a result-oriented offense requiring a mental state that relates not to the specific conduct but to the result of that conduct. *Williams v. State*, 235 S.W.3d 742, 750 (Tex. Crim. App. 2007). It is not enough for the State to prove that the defendant engaged in the alleged conduct with the requisite criminal intent; the State must prove that the defendant caused the result with the requisite criminal intent. *See Cook v. State*, 884 S.W.2d 485, 490 (Tex. Crim. App. 1994); *Lee v. State*, 21 S.W.3d 532, 540 (Tex. App.—Tyler 2000, pet. ref’d).

On appeal, Estrella challenges her conviction for intentionally or knowingly causing a serious bodily injury to Jason by omission—that is, by failing to provide medical treatment for his hip burn. A person acts “intentionally” with respect to a result of her conduct when it is her conscious objective or desire to cause the result. TEX. PENAL CODE § 6.03(a). A person acts “knowingly” when she is aware that her conduct is reasonably certain to cause the result. *Id.* § 6.03(b). The result here, “serious bodily injury” includes a “bodily injury . . . that causes death, serious permanent disfigurement, or protracted loss or impairment of the function of any

bodily member or organ.” *Id.* § 1.07(a)(46); *cf. id.* § 1.07(a)(8) (defining “bodily injury” as “physical pain, illness, or any impairment of physical condition.”).

Thus, the State was required to prove more than that Estrella failed to provide medical care. It has to prove that, by failing to provide medical care for Jason’s hip burn, Estrella caused a serious bodily injury and, in doing so, was aware that the lack of appropriate care was reasonably certain to cause a serious bodily injury. *See Thompson v. State*, 227 S.W.3d 153, 160 (Tex. App.—Houston [1st Dist.] 2006, pet. ref’d).

Standard of Review

In an appeal of a criminal conviction, we review a challenge to the sufficiency of the evidence under the standard enunciated in *Jackson v. Virginia*, 443 U.S. 307, 318–20 (1979). *See Brooks v. State*, 323 S.W.3d 893, 895 (Tex. Crim. App. 2010). Under the *Jackson* standard, evidence is insufficient when, considered in the light most favorable to the verdict, no rational factfinder could have found that each essential element of the charged offense was proven beyond a reasonable doubt. *See Jackson*, 443 U.S. at 319; *Laster v. State*, 275 S.W.3d 512, 517 (Tex. Crim. App. 2009). Legal sufficiency of the evidence is measured by the elements of the offense as defined by a hypothetically correct jury charge. *Malik v. State*, 953 S.W.2d 234, 240 (Tex. Crim. App. 1997).

We consider both direct and circumstantial evidence as well as all reasonable inferences that may be drawn from that evidence. *Clayton v. State*, 235 S.W.3d 772, 778 (Tex. Crim. App. 2007). We resolve any inconsistencies in the evidence in favor of the verdict. *Curry v. State*, 30 S.W.3d 394, 406 (Tex. Crim. App. 2000); *see Clayton*, 235 S.W.3d at 778 (“When the record supports conflicting inferences, we presume that the factfinder resolved the conflicts in favor of the prosecution and therefore defer to that determination.”).

Jurors are the exclusive judges of the facts, the credibility of the witnesses, and the weight to be given to witness testimony. *Penagraph v. State*, 623 S.W.2d 341, 343 (Tex. Crim. App. [Panel Op.] 1981); *Jaggers v. State*, 125 S.W.3d 661, 672 (Tex. App.—Houston [1st Dist.] 2003, pet. ref’d). The jury may choose to believe or disbelieve any part of a witness’s testimony. *Davis v. State*, 177 S.W.3d 355, 358 (Tex. App.—Houston [1st Dist.] 2005, no pet.). Inconsistencies or contradictions in a witness’s testimony do not destroy that testimony as a matter of law. *McDonald v. State*, 462 S.W.2d 40, 41 (Tex. Crim. App. 1970).

Circumstantial evidence is as probative as direct evidence in establishing guilt, and circumstantial evidence alone can be sufficient to establish guilt. *Sorrells v. State*, 343 S.W.3d 152, 155 (Tex. Crim. App. 2011). “Each fact need not point directly and independently to the guilt of the appellant, as long as the cumulative

force of all the incriminating circumstances is sufficient to support the conviction.”
Hooper v. State, 214 S.W.3d 9, 13 (Tex. Crim. App. 2007).

The *Jackson* standard defers to the factfinder to resolve any conflicts in the testimony, to weigh the evidence, and to draw reasonable inferences from basic facts to ultimate facts. *Jackson*, 443 U.S. at 319; *Clayton*, 235 S.W.3d at 778. An appellate court presumes the factfinder resolved any conflicts in the evidence in favor of the verdict and defers to that resolution, provided that the resolution is rational. *See Jackson*, 443 U.S. at 326. If an appellate court finds the evidence insufficient under this standard, it must reverse the judgment and enter an order of acquittal. *See Tibbs v. Florida*, 457 U.S. 31, 41 (1982).

Legally Sufficient Evidence Supports Conviction

Estrella challenges the legal sufficiency of the evidence to support her conviction. Specifically, she argues that there is legally insufficient evidence that the one-day delay in treatment for Jason’s hip burn caused him a serious bodily injury.

A. Evidence regarding the burn, the timing of treatment, and the aftercare

Jason testified that Estrella burned his hip and groin area as punishment for allegedly taking her ring. When Jason’s father returned home from work later that day, Estrella showed him the burns. Jason’s father testified that he called his uncle,

who is a physician in Mexico, and his uncle told him to take Jason to the doctor “as soon as [he] could.”⁵

Estrella testified that she also told Jason’s father that he should take Jason to a doctor, but Jason’s father chose not to go to the hospital. Estrella agreed that she was capable of taking Jason to the hospital or urgent care facility herself yet did not do so.

Instead of going to the hospital, emergency room, or urgent care facility on the day of the burns, Jason’s parents waited until the next day and elected to drive several hours to Matamoros, Mexico before initiating medical treatment for Jason. That next morning, the entire family—Jason, his father, Estrella, and all five of the other children—drove more than five hours and 350 miles from Houston to Mexico. Before entering Mexico, though, they detoured to Brownsville and dropped off the five other children at their grandparents’ house.

The doctor in Matamoros prescribed ointments, which Estrella administered at home. Estrella and Jason’s father testified that they followed the doctor’s instructions for wound care. But neither of them took Jason to a doctor for follow-up care in the United States or in Mexico. Jason’s father testified the burns were healing within a couple days.

⁵ The uncle did not testify at trial.

Jason's father explained why he and Estrella drove Jason to a doctor in Mexico the day after the burn instead of taking him to a local emergency room or urgent care center "as soon as [he] could" as his uncle had recommended. He testified that Jason did not have Medicaid and therefore he did not take Jason to local doctors—in general and for the burns specifically—due to the cost. Jason's father testified that he chose to drive to Mexico to obtain treatment for Jason's burns because it would be more "efficient" and cheaper than seeing a doctor here.⁶ On cross-examination, though, it was established that Jason's father was a degreed engineer with a six-figure salary and that all the other children in the home would see local doctors for their illnesses and injuries.

When each of the siblings was asked about Jason's burns and extensive scarring, they testified that they had no idea that Jason had ever been burned, even though they all had ridden several hours in the car with Jason that day. Estrella agreed that none of the children knew that Jason had been burned or that they were driving to Mexico to treat his burns. Whatever was done in the home to treat Jason's extensive burns, the other children remained unaware of the burn incident or the treatment.

⁶ The emergency room pediatrician, Dr. Shah, testified that a child who presents with suspected child abuse at the hospital where he practices medicine would be referred to Child Protective Services.

Jason testified that the only treatment he received from a doctor for his burns was during the one-day trip to Mexico. He testified that the trip to Mexico did not occur the same day he was burned. It was delayed. After the trip to Mexico, Estrella changed his bandages, applied ointments, and poured an alcohol-based product on his burns. He stated that the burn was painful.

Dr. Shah, the pediatric emergency physician who treated Jason upon his arrival at the emergency room the day he showed up at Jane's house, testified that, given the extensive scarring on Jason's hip, the burn had passed through several layers of skin. In his medical opinion, a burn that severe would have caused "significant pain" and would have required immediate medical attention as well as follow-up medical care with physicians to adequately address skin tightening and other healing complications associated with burns to joint and groin areas.

On the issue of whether Jason's burn healed adequately, Jason testified that the extensive scarring in his groin continues to cause him pain years later, and his treating physicians testified that the burn had not healed appropriately.

B. Evidence that the delay caused a serious bodily injury

The certified paramedic who initially saw Jason and transported him to the hospital testified that the scarring on Jason's hip indicated to him, based on his training and experience, that it was very painful, required immediate medical attention, and could not have been adequately cared for at home.

Dr. Shah testified that, in his medical opinion, a burn as severe as Jason's hip burn would have caused "significant pain" and would have required immediate medical attention as well as follow-up medical care with physicians. It did not appear to have healed correctly. Dr. Shah explained why the location of the hip burn increased the need for immediate and more thorough medical care. He testified that a burn that occurs at a joint in the body or where the skin is pulled due to regular bodily movement is more painful, more difficult to treat, and requires more extensive monitoring:

Burns that occur over joints are higher risk locations because as a burn is healing the skin can get tight. And so it's important that a patient who has a burn over a joint have follow-up [] over time, usually we'll refer them to a plastic surgeon to monitor wound healing to make sure that their joints aren't getting tight So we would consult our plastic surgeon to evaluate it and to also ensure follow-up after they get discharged from the hospital to monitor wound healing over time. We would make sure that the wound is clean, because burns are at risk for becoming infected.

Additionally, because the burn was near Jason's genital area, it added an extra layer of risk and required transfer to a burn center, beyond what even Texas Children's could provide.

Dr. Isaac, the Texas Children's pediatrician who took over Jason's care after he was transferred from the emergency center, agreed with Dr. Shah's assessment. In Dr. Isaac's medical opinion, the scars indicated that the burn was "quite severe" and "quite painful." It would have required extensive medical care because it was

in a joint-area on Jason's body—an area that would have been subjected to frequent movement. “And because . . . it's the hip joint, that skin contracts and moves and so the healing might actually be quite prolonged and protracted . . . taking a long time for it to heal because of the movement of the skin in that particular area.”

According to Dr. Isaac, treatment should have included ointments, antibiotics, pain management with localized numbing, and oral medications. The dressing should have been changed regularly. And, due to the area of the burn, a plastic surgeon and burn specialist should have been consulted to promote proper healing and maximize future functionality. A burn like this would require multiple follow-up appointments to monitor the skin's healing in this high-movement area.

According to Dr. Isaac, it was not reasonable to wait until the next day to seek medical treatment for a burn like this or to have a child ride many hours in a car, in a seated position, while suffering from an untreated hip and groin burn.

Dr. Isaac testified that the condition of Jason's scarring indicated that he had not received appropriate, timely medical attention. In Dr. Isaac's medical judgment, Jason should have been taken to the closest hospital available and likely transferred to a burn facility. Dr. Isaac testified that Jason has permanent scarring and a permanent disfigurement, which in this case constitutes a serious bodily injury.

According to Dr. Isaac, the limited treatment Jason received, as described by Jason, would have caused “unnecessary pain.” Appropriate medical treatment would have focused on reducing the scarring and improving the functionality of the hip joint, and based on the extensive scarring on Jason’s hip, he did not obtain the benefits he would have received from such treatment. In other words, the disfiguring scarring was worse than it should have been if he were to have been provided medical care at a local emergency room on the day of the burns and necessary follow-up medical care during the healing process to address skin tightening and scarring.

C. *Dusek* is distinguishable

Estrella likens this case to what occurred in *Dusek v. State*, in which the Austin Court of Appeals reversed a conviction for failure to obtain medical care for a young child. 978 S.W.2d 129 (Tex. App.—Austin 1998, pet. ref’d). In *Dusek*, the defendant-mother took her son to an emergency room within a couple hours of her fiancé breaking the boy’s leg. *Id.* at 131–33. The doctor determined that the child had multiple health problems, including a broken leg. *Id.* at 131. A nurse believed that the mother’s implausible explanation suggested abuse. *Id.* The mother was charged with multiple injury-to-a-child offenses, including failure to obtain medical care for the broken leg. *Id.* at 132.

To convict on that offense, the jury had to find beyond a reasonable doubt that the boy suffered a serious bodily injury to his leg because his mother did not provide medical care. *Id.* at 133. The jury convicted the mother. *Id.* at 132. But, on appeal, the Austin court concluded that there was legally insufficient evidence that the denial of medical care caused a serious bodily injury and reversed that particular conviction. *Id.* at 133. According to the appellate court, there was no evidence that

- the mother failed to obtain medical treatment for the broken leg;
- any omission on her part aggravated the seriousness of the injury;
- the leg had been broken for an unusual period of time;
- treatment had been delayed; or
- recovery was in any way hindered by a delay in receiving medical care.

Id.

Here, by contrast, there was evidence of a delay in treatment. The physicians testified that such a severe burn would require immediate treatment. The uncle in Mexico, according to Jason's father, instructed that Jason be taken to a doctor as soon as possible. And Estrella testified that she recognized Jason should have been taken to a nearby hospital. Nonetheless, Estrella and her husband waited until the next day to obtain medical care—including pain management—and decided to drive 350 miles to see a doctor in Mexico instead of visiting a nearby hospital or

urgent care facility. They never took him for a follow-up appointment, which denied him any medical monitoring for skin tightening in the hip joint, excessive scarring, or related unresolved pain.

There also was evidence that his recovery was hindered. The physicians testified that the extreme state of the scarring indicated that the burn had not been appropriately treated and had not appropriately healed. They recounted what care should have been administered and opined that, because the burn was so extensively scarred, adequate care was not provided. From this testimony, there is legally sufficient evidence that Jason's disfigurement was worse than it would have been with appropriate treatment.

Viewing the evidence in the light most favorable to the verdict, we hold that the jury rationally could have determined that Estrella's failure to obtain medical treatment for Jason on the day he was burned caused serious bodily injury, including additional disfigurement, beyond what would have occurred with proper treatment. We therefore conclude that the evidence satisfies the *Jackson* standard for legal sufficiency. *See Jackson*, 443 U.S. at 318–20; *Brooks*, 323 S.W.3d at 895. Accordingly, we overrule Estrella's legal sufficiency challenge.

Factual-Sufficiency Review has been Abolished

Estrella also argues that the evidence is factually insufficient to support the jury's verdict of guilty. The Court of Criminal Appeals has abolished factual-

sufficiency review of issues on which the State bore the burden of proof at trial. *See Brooks*, 323 S.W.3d at 894–95 (plurality op.); *id.* at 926 (Cochran, J., concurring); *see also Howard v. State*, 333 S.W.3d 137, 138 n.2 (Tex. Crim. App. 2011) (explaining that *Brooks* “abolished factual-sufficiency review”). Thus, “the *Jackson v. Virginia* legal-sufficiency standard is the only standard that a reviewing court should apply in determining whether the evidence is sufficient to support each element of a criminal offense that the State is required to prove beyond a reasonable doubt.” *Brooks*, 323 S.W.3d at 895. We have already held that the evidence is legally sufficient under the *Jackson* standard to support the jury’s verdict. Estrella’s factual-sufficiency challenge presents nothing for our review and is overruled.

Conclusion

We affirm.

Harvey Brown
Justice

Panel consists of Justices Keyes, Brown, and Lloyd.

Do not publish. TEX. R. APP. P. 47.2(b).