

Affirmed and Memorandum Opinion filed November 9, 2010.



In The

Fourteenth Court of Appeals

NO. 14-09-00636-CR

JUAN CARLOS LEYVA, Appellant

V.

STATE OF TEXAS, Appellee

**On Appeal from the 230th District Court
Harris County, Texas
Trial Court Cause No. 1124331**

MEMORANDUM OPINION

Appellant Juan Carlos Leyva was charged by indictment with intentionally and knowingly causing serious bodily injury to a child by burning her with a hot liquid. *See* TEX. PENAL CODE ANN. § 22.04(a)(1) (Vernon Supp. 2009). The jury convicted him and further found that he used a deadly weapon—the hot liquid—in the commission of the offense. We overrule his challenge to the legal and factual sufficiency of the evidence and affirm his conviction.

I. FACTUAL AND PROCEDURAL BACKGROUND

At the time of the offense, appellant resided with his girlfriend, his girlfriend's two daughters, and the couple's infant child. Appellant cared for the children while his girlfriend worked. In January 2007, appellant's girlfriend returned from work to find that her three-year-old daughter had been severely burned. The complainant told her mother that appellant had burned her with hot soup. No one sought medical attention for the child until, weeks later, parts of her fingers fell off. At the urging of a coworker, the complainant's mother finally took the child to the hospital, and when she returned home, she found that appellant had left, taking his possessions with him. The complainant and her sisters were removed from their mother's home and subsequently adopted.

At trial two years after the offense, the complainant did not recognize appellant in the courtroom, but named him as the person who had injured her and testified that he burned her by throwing hot oil or hot soup on her. The complainant's sister, who was five at the time of the offense and seven at the time of trial, identified appellant in court and testified that he had been cooking soup when he threw hot oil on the complainant. The complainant's sister thought her mother called the police and an ambulance, and that appellant went with complainant and her mother to the hospital.

Appellant was convicted, fined \$10,000, and sentenced to sixty-five years' confinement in the Texas Department of Criminal Justice, Institutional Division. He now challenges the legal and factual sufficiency of the evidence to support his conviction.

II. STANDARD OF REVIEW

In evaluating the legal and factual sufficiency of the evidence to support a criminal conviction, we consider all the evidence in the light most favorable to the verdict and determine whether, based on the evidence and the reasonable inferences to be drawn from

it, a rational juror could have found the essential elements of the crime beyond a reasonable doubt. *Brooks v. State*, PD-0210-09, 2010 WL 3894613, at *13–14 (Tex. Crim. App. Oct. 6, 2010) (plurality op.); *Hooper v. State*, 214 S.W.3d 9, 13 (Tex. Crim. App. App. 2007).

III. ANALYSIS

Appellant challenges the legal and factual sufficiency of the evidence supporting his conviction for causing serious bodily injury to a three-year-old child by burning her with a hot liquid. Specifically, he contends that the testimony of the complainant and her sister was not credible because (1) the complainant did not recognize him at trial, and (2) the girls sometimes said that the hot liquid used in the offense was oil and sometimes said it was soup.

For at least three reasons, these complaints afford no basis for reversal. First, appellate courts do not reweigh the credibility of witnesses. *See Brooks*, 2010 WL 3894613, at *7–10. Second, no eyewitness testimony was necessary because a conviction can be supported by circumstantial evidence alone. *Kuciemba v. State*, 310 S.W.3d 460, 462 (Tex. Crim. App. 2010). Consequently, the complainant’s failure to recognize appellant in court does not render the evidence of appellant’s guilt insufficient. *See Earls v. State*, 707 S.W.2d 82, 85 (Tex. Crim. App. 1986) (holding evidence sufficient to support conviction despite the complainant’s misidentification at trial of one of the jurors as the perpetrator of the offense). Third, the type of liquid used is not an element of the offense and was not specified in the indictment; thus, the State was not required to present any evidence of the liquid’s identity. *See TEX. PENAL CODE ANN. § 22.04(a)(1)* (Vernon Supp. 2009) (“A person commits an offense [of injury to a child] if he intentionally, knowingly, recklessly, or with criminal negligence, by act or intentionally, knowingly, or recklessly by omission, causes to a child . . . a serious bodily injury . . .”).

Here, the State has proved every element of the offense for which appellant was indicted. It is undisputed that the complainant was three years old at that the time of the offense and that her injuries were permanent and disfiguring. In addition, two physicians and a police officer testified that hot liquids are capable of causing serious bodily injury or death. Thus, the only disputed facts were whether appellant caused the complainant's injuries, and whether he did so with the requisite intent. Two eyewitnesses testified that the complainant was injured when the appellant threw hot liquid on her, and the complainant's mother testified that when she finally took the complainant to the hospital, appellant left their home taking all of his possessions. *See Guevara v. State*, 152 S.W.3d 45, 50 (Tex. Crim. App. 2004) (“Intent may be inferred from circumstantial evidence such as acts, words, and the conduct of appellant.”); *Burks v. State*, 876 S.W.2d 877, 903 (Tex. Crim. App. 1994) (en banc) (“Evidence of flight is admissible as a circumstance from which an inference of guilt may be drawn.”).

We conclude that the evidence is sufficient to support appellant's conviction. We therefore overrule the issues presented on appeal and affirm the trial court's judgment.

/s/ Tracy Christopher
Justice

Panel consists of Justices Seymore, Boyce, and Christopher.

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