

Affirmed and Memorandum Opinion filed February 4, 2016.



In The

Fourteenth Court of Appeals

NO. 14-15-00255-CR

JESUS LORENZO VILLASENOR, Appellant

V.

THE STATE OF TEXAS, Appellee

**On Appeal from the 174th District Court
Harris County, Texas
Trial Court Cause No. 1386869**

M E M O R A N D U M O P I N I O N

A jury convicted Jesus Lorenzo Villasenor of aggravated assault of a family member.¹ The trial court sentenced appellant to confinement in the Institutional Division of the Texas Department of Criminal Justice for thirty-five years.

¹ The record reflects the trial court entered an affirmative finding of family violence in its judgment. *See* Tex. Code Crim. Proc. art. 42.013.

Appellant brings this appeal claiming only that there was insufficient evidence to sustain a finding of serious bodily injury. We affirm.

When reviewing the sufficiency of the evidence, we view all of the evidence in the light most favorable to the verdict and determine whether, based on that evidence and any reasonable inferences from it, any rational fact finder could have found the elements of the offense beyond a reasonable doubt. *Gear v. State*, 340 S.W.3d 743, 746 (Tex. Crim. App. 2011)(citing *Jackson v. Virginia*, 443 U.S. 307, 318–19, 99 S.Ct. 2781, 61 L.Ed.2d 560 (1979)). The jury is the exclusive judge of the credibility of witnesses and the weight of the evidence. *Isassi v. State*, 330 S.W.3d 633, 638 (Tex. Crim. App. 2010). Thus, we defer to the jury’s responsibility to fairly resolve conflicts in the evidence, and we draw all reasonable inferences from the evidence in favor of the verdict. *Id.*

A person commits the offense of assault if that person intentionally, knowingly, or recklessly causes bodily injury to another person. Tex. Penal Code § 22.01(a)(1). As relevant to this case, the offense becomes aggravated assault if that person commits the offense of assault and causes serious bodily injury. *Id.* § 22.02(a). The record reflects that appellant was charged with aggravated assault by causing serious bodily injury to a person with whom he had a dating relationship by striking the complainant with his hand. *See id.* §§ 22.02(a)(2), 22.02(b)(1) (defining respectively “assault” and “aggravated assault”); and Tex. Fam. Code Ann. § 71.0021 (defining “dating relationship”).

Appellant’s only challenge is to the sufficiency of the evidence to support the jury’s finding that the complainant suffered serious bodily injury. Serious bodily injury is “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)(46).

The jury heard the following evidence regarding the complainant's injuries. She lost consciousness multiple times during the assault, woke up choking on her own blood, could not breathe, and there was blood "squirting out" of her face. The complainant suffered a laceration on her nose, two black eyes, a fractured nose, orbital fractures, and head trauma. Her face was swollen all over and there was bleeding in her eye. Further, the complainant had an abrasion on her leg, a bloody nose, contusions, and pain all over her body. Afterwards, the complainant suffered dizziness, double vision, and memory loss. For more than two weeks, she could not work and could not get out of bed. Approximately ten months after the assault, the complainant was still experiencing blurriness in one eye and trouble breathing through her nose. She cannot see clearly with her left eye as far as she can with the right and has flashes in her vision that never happened before the assault. The complainant was told that she would need surgery for her nose. The complainant received stitches for the laceration on her nose and has a scar. The orbital fracture resulted in misplaced bones and she has a bump by her eyebrow that was not there before. Photographs taken three days after the assault depicting the complainant's injuries were admitted into evidence.

Officer Sylvester of the Houston Police Department testified that the complainant's injuries were serious and severe. Appellant also admitted that her injuries were "very serious."

Whether a bodily injury is "serious" is determined at the time of the injury, without taking into account any ameliorative effects of medical treatment. *Brown v. State*, 605 S.W.2d 572, 575 (Tex. Crim. App. 1980). A broken nose is a serious bodily injury even if disfigurement or impairment of function does not result. *See Goodman v. State*, 710 S.W.2d 169, 170 (Tex. App.—Houston [14th Dist.] 1986, no pet.). In this case, there was evidence of disfigurement and impairment. The

orbital fractures causing protrusion are also a serious bodily injury. *See Moore v. State*, 802 S.W.2d 367, 369–70 (Tex. App.—Dallas 1990, pet. ref'd) (finding sufficient evidence of serious bodily injury where complainant's cheekbone was fractured in three places and surgery was needed to prevent significant cosmetic deformity). Thus, we conclude that a rational trier of fact could have found beyond a reasonable doubt that appellant's conduct resulted in serious bodily injury to the complainant. Appellant's sole issue is overruled and the judgment of the trial court is affirmed.

/s/ John Donovan
Justice

Panel consists of Justices Jamison, Donovan, and Brown.
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