

Affirmed and Memorandum Opinion filed July 20, 2023.



In The

Fourteenth Court of Appeals

NO. 14-22-00511-CR

TROY EDWARD HOLT, Appellant

V.

THE STATE OF TEXAS, Appellee

**On Appeal from the 90th District Court
Young County, Texas
Trial Court Cause No. CR11922**

MEMORANDUM OPINION

A jury convicted appellant Troy Edward Holt of the second-degree felony of aggravated assault with a deadly weapon in June 2022. Tex. Penal Code Ann. § 22.02(a)(2). Appellant pleaded true to two previous felony convictions. At appellant's election, the trial court assessed punishment at imprisonment for 25 years and a \$2,500 fine. Tex. Penal Code Ann. §§ 12.33(a), .42(d). In three issues, appellant challenges his conviction, arguing (1) the trial court erred by not appointing an expert to review the complainant's medical records, (2) the evidence

was insufficient to support a finding that complainant suffered bodily injury from the assault alleged in the indictment, and (3) the evidence was insufficient to support a finding that appellant used a toilet plunger as a deadly weapon as alleged in the indictment. We affirm.¹

I. BACKGROUND

Appellant and complainant met in 2019 while they were both working at a local grocery store in Young County, Texas. They started dating and some months later appellant moved in with complainant and her adult son. The relationship between appellant and complainant deteriorated over disagreements relating to complainant's son.

Complainant testified that her relationship with appellant had not been abusive or violent until the night of the alleged assault. When complainant returned from work late one evening, she found appellant had been drinking and was upset. After a brief disagreement, appellant left, and complainant believed that he went to drink with a friend. When he returned in the early hours of the morning, complainant described that he demanded to see her phone after accusing her of being disloyal. When complainant refused, she testified that appellant hit her in her right eye with his fist, causing her to fall back and break the pictures on the wall behind her.

Complainant testified that the assault continued as appellant threatened her with a baseball bat, pushed her down in the bathroom and hit her face again with

¹ The Supreme Court of Texas ordered the Court of Appeals for the Second Court of Appeals District to transfer this appeal (No. 02-22-00121-CR) to this court. Misc. Docket No. 22-9050 (Tex. June 30, 2022); *see* Tex. Gov't Code Ann. §§ 73.001, .002. Because of the transfer, we decide the case in accordance with the precedent of the transferor court under principles of stare decisis if our decision otherwise would have been inconsistent with the transferor court's precedent. *See* Tex. R. App. 41.3.

his fist. She further testified that appellant then grabbed a toilet plunger and began hitting her body in various places with the toilet plunger. Appellant then allegedly started to shove the handle of the toilet plunger down complainant's throat. Complainant tried to use her phone to get help, which angered appellant so that he changed course and used the toilet-plunger handle to choke complainant and cut off her airway. Appellant threatened that he would shove complainant's phone down her throat if she tried to make any more phone calls. At the end of the assault, complainant told appellant she was injured and needed to go to the hospital; however, appellant allegedly responded that she was fine.

Early the next morning, appellant and complainant agreed to go out for breakfast. After the pair met up with complainant's son, appellant got into a disagreement with complainant's son and left. Complainant then drove herself to her sister's home. Complainant's sister called the police, and appellant was later arrested.

Appellant testified at trial but described a different version of the incident. He acknowledged that the two physically fought, but he asserts that complainant hit him first. Although he admitted striking complainant in the face, he maintained that he never attempted to shove a toilet-plunger handle down complainant's throat.

II. ANALYSIS

A. Appointment of expert

In issue 1, appellant argues the trial court abused its discretion by denying his request for the appointment of an expert who could testify as to whether the injuries sustained by complainant constituted bodily injury.

In a pro se motion for expert assistance filed in April 2022, appellant asked

the court to appoint a medical-injury expert to review complainant’s medical records and provide expert testimony as to any alleged injuries constituting “serious bodily injury” as that term is defined in the Penal Code, as well as expert testimony “as to how any alleged bodily injury would be inflicted.” After a new indictment was filed, appellant responded by filing a nearly identical motion for expert assistance, except that he sought expert review on alleged injuries constituting “bodily injury” as that term is defined in the Penal Code, instead of “serious bodily injury.”

Days before trial, appellant filed a pretrial application for writ of habeas corpus. In his application, appellant reiterated his request for an appointed expert, claiming “[o]nly an expert with special training in wounds and injuries can . . . determine with scientific accuracy whether [the toilet plunger] was actually used in any manner alleged by indictment.” Although appellant had the burden to explain why the injuries at issue or mechanism of injury required specialized knowledge or skill to understand or evaluate, appellant’s motion offered no explanation of why an expert was needed to establish that complainant experienced physical pain (i.e., bruising, pain, and cuts) from an assault by a toilet plunger.² *See* Tex. R. Evid. 702.

At pretrial, the trial court acknowledged appellant’s habeas motion but reserved ruling until hearing the evidence at trial. After the evidence had closed, the trial court denied appellant’s application for writ of habeas corpus explaining “the issue of serious bodily injury is really not a part of what the indictment . . . alleges, so the necessity of having an expert for serious bodily injury, since that’s not part of the proof of the case today, I don’t think it’s required” Neither

² The Penal Code defines “bodily injury” as physical pain, illness, or any impairment of physical condition. Tex. Penal Code Ann. § 1.07(8). “Any physical pain, however minor, will suffice to establish bodily injury.” *Garcia v. State*, 367 S.W.3d 683, 688 (Tex. Crim. App. 2012). A jury may infer whether a person felt physical pain because “people of common intelligence understand pain and some of the natural causes of it.” *Id.*

appellant nor his attorney objected or alerted the trial court that it had not ruled on appellant's most recent motion—responsive to the change in the indictment—seeking expert review and testimony of “bodily injury,” rather than “serious bodily injury.”

Given that the trial court did not rule on or consider appellant's revised motion seeking appointment of an expert to review whether complainant experienced bodily injury, appellant did not preserve error with respect to this request. Tex. R. App. P. 33.1(a)(2).

We overrule issue 1.

B. Sufficiency of the evidence

Appellant challenges the sufficiency of the evidence to establish that (1) he caused bodily injury to complainant by attempting to shove a toilet plunger down complainant's throat and (2) he used or exhibited a deadly weapon as alleged.

Appellant does not dispute that complainant suffered bodily injury in the form of cuts, bruises, and pain from appellant's assault of complainant. Instead, appellant alleges there is insufficient evidence to establish the injuries were caused by appellant's alleged attempts to shove the toilet-plunger handle down complainant's throat or that the toilet plunger was used as a deadly weapon. He argues that the State had the burden to prove that complainant's injuries were caused in a very specific manner—from the alleged attempt to shove the toilet-plunger handle down her throat—as specified in the indictment.

1. Standard of review

The due-process guarantee of the Fourteenth Amendment requires that a conviction be supported by legally sufficient evidence. *Broughton v. State*, 569 S.W.3d 592, 607 (Tex. Crim. App. 2018); *see also Jackson v. Virginia*, 443 U.S.

307, 315–16 (1979). In assessing the 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 that evidence and reasonable inferences therefrom, a rational juror could have found the essential elements of the crime beyond a reasonable doubt.” *Hooper v. State*, 214 S.W.3d 9, 13 (Tex. Crim. App. 2007) (citing *Jackson*, 443 U.S. at 318–19); *see also Brooks v. State*, 323 S.W.3d 893, 902 (Tex. Crim. App. 2010). We measure the evidence by the elements of the offense as defined by the hypothetically correct jury charge. *Malik v. State*, 953 S.W.2d 234, 240 (Tex. Crim. App. 1997).

The reviewing court must defer to the jury’s determinations of the witnesses’ credibility and the weight to be given their testimony, as the jury is the sole judge of those matters. *Jackson*, 443 U.S. at 326; *Brooks*, 323 S.W.3d at 899–900.

2. Bodily injury

We begin with complainant’s testimony. Complainant testified that appellant “started shoving the stick down my throat, and I grabbed it.” She explained that appellant’s attempts to shove the toilet-plunger handle down her throat caused a great of deal of pain in her gums.

There were also photographs of complainant’s mouth and gums admitted into evidence, which complainant testified reflected damage caused by the toilet-plunger assault: “I mean, it opened because I have no teeth up here. It got — it didn’t go too far down, but then it went in. And I tried to push it out, yes, ma’am. But it hit my gums right here (indicating).” Although complainant testified there were no cuts or blood on the back of her throat, there was legally sufficient evidence that complainant’s gums were injured because of appellant’s attempt to assault her with the toilet plunger. Evidence of a cut or bruise is sufficient to show bodily injury. *Bin Fang v. State*, 544 S.W.3d 923, 928 (Tex. App.—Houston [14th

Dist.] 2018, no pet.).

Viewed in the light most favorable to the verdict, this evidence is legally sufficient to prove that appellant intentionally, knowingly, or recklessly caused bodily injury to complainant (or threatened complainant with imminent bodily injury) while using or exhibiting a toilet plunger as a deadly weapon. Tex. Penal Code Ann. § 22.01(a)(1)(2), .02(a)(2).

Appellant acknowledges that the injuries to complainant’s gums “could certainly have been caused by the toilet-plunger handle, but that fact is not established by the evidence beyond a reasonable doubt.” His challenge to the sufficiency of the evidence is an attack on complainant’s credibility consistent with his defensive theory at trial that he never tried to shove a toilet-plunger handle down complainant’s throat. However, credibility of witness testimony and the weight to attach to witness testimony is the sole province of the jury and is not for this court to disturb. *See Balderas v. State*, 517 S.W.3d 756, 765–66 (Tex. Crim. App. 2016).

We overrule issue 2.

3. Deadly weapon

In issue 3, appellant argues there was insufficient evidence to establish that he used the toilet-plunger handle as a deadly weapon in the manner alleged in the indictment. Appellant does not challenge that a toilet plunger can be used as a deadly weapon. Rather, appellant’s argument is that the State was required to produce legally sufficient evidence that complainant suffered injuries from appellant’s attempt to shove the toilet-plunger handle down her throat. Appellant further points out that complainant offered conflicting testimony about whether the plunger ever went down her throat.

The elements of the offense do not require that appellant was able to shove the plunger to the back of or all the way down complainant's throat. Complainant's testimony provided legally sufficient evidence that appellant attempted to shove a toilet plunger down her throat, and she suffered injuries as a result. Appellant's argument implying that injuries to complainant's throat in specific locations were required to establish the offense are not grounded in the statutory requirements for aggravated assault. *See* Tex. Penal Code Ann. § 22.01(a)(1)(2), .02(a)(2). A rational jury could have found the appellant used or exhibited the toilet-plunger handle as a deadly weapon during the commission of the assault beyond a reasonable doubt, so the evidence is legally sufficient.

To the extent that complainant's testimony may have contained inconsistencies regarding whether the plunger went into her throat or how far into her throat the toilet-plunger handle was shoved, it is the role of the jury to resolve conflicts in the evidence, and the jury may reject any part or all of a witness's testimony in order to reconcile conflicts. *See Lancon v. State*, 253 S.W.3d 699, 707 (Tex. Crim. App. 2008); *see also Estrella v. State*, 546 S.W.3d 789, 796–97 (Tex. App.—Houston [1st Dist.] 2018, pet. ref'd) (“Inconsistencies or contradictions in a witness's testimony do not destroy that testimony as a matter of law.”) (citing *McDonald v. State*, 462 S.W.2d 40, 41 (Tex. Crim. App. 1970)).

We overrule issue 3.

III. CONCLUSION

We affirm the trial court's judgment as challenged on appeal.

/s/ Charles A. Spain
Justice

Panel consists of Chief Justice Christopher and Justices Jewell and Spain.

Do Not Publish — Tex. R. App. P. 47.2(b).