COURT OF APPEALS
SECOND DISTRICT OF TEXAS
FORT WORTH

NO. 02-16-00210-CR
NO. 02-16-00211-CR

GREGORY S. LYONS — APPELLANT

V.

THE STATE OF TEXAS — STATE

FROM CRIMINAL DISTRICT COURT NO. 3 OF TARRANT COUNTY
TRIAL COURT NOS. 1424272R, 1424273R

MEMORANDUM OPINION[1]

I. INTRODUCTION

Appellant Gregory S. Lyons appeals his two convictions for assault against a family or household member enhanced by previous convictions. In five points, Lyons argues that the evidence is insufficient to support the jury's finding that he

[1]*See* Tex. R. App. P. 47.4.

lived with the victim, that the trial court erred by admitting certain evidence, and that the State failed to prove its alleged enhancements. We will affirm.

II. BACKGROUND

A jury convicted Lyons of two felony assaults against a family or household member—the offenses occurred three days apart against the same victim, Cathy.[2] Cathy, a thirty-four-year-old mentally challenged victim, lived in a second-floor Euless apartment directly above her elderly mother. Cathy met Lyons and allowed him to move into her apartment with her even though she barely knew him. Although Cathy stated at trial that she and Lyons were not in a dating relationship and that he lived with her against her will, she averred that Lyons had moved his clothing and TVs into her apartment, stayed there "pretty much every night," and went to and from work during his time at her apartment. Cathy also told an investigating officer that she had lived with and dated Lyons for four months. And she described Lyons by using the term "boyfriend."

On an October day, Cathy's mother received a text from Cathy asking her to call the police. The mother called 911. The evidence shows that Lyons had been beating and raping Cathy for hours that day. When officers arrived, headed to Cathy's upstairs apartment, and knocked, no one answered. The officers then went downstairs to check with Cathy's mother about the 911 call. At this point,

[2] "Cathy" is a pseudonym designed to protect the anonymity of the victim in this case. At trial, all sides assumed that Cathy was mentally challenged.

the mother became extremely upset at the news that no one had answered Cathy's door, so she asked the officers to break it down.

The mother was concerned because she had seen bruises on her daughter and knew that Lyons had sodomized Cathy a few days earlier. Returning upstairs, the officers heard sounds of distress and a man yelling at a woman—they entered Cathy's apartment by force. When the officers initially rammed the door, Lyons was on the other side, and he instantly slammed it shut. The officers' second attempt removed the door from its frame, and it landed on top of Lyons, allowing them to apprehend him. The officers found Cathy on the floor, unresponsive, obviously injured, and clad only in a shirt—she appeared unconscious. Lyons had beaten Cathy, dragged her, tortured her with hot water, and strangled her.

Cathy's later medical treatment revealed that Lyons had mentally and physically abused her for several weeks, and the assault on the day the officers arrived occurred ostensibly because Cathy had tried to leave. Specifically, when Cathy told Lyons that she had a headache and wanted to leave for a little bit, he pulled her to him, hit her repeatedly in the stomach and head, dragged her into the bathroom, and kicked her—all while repeatedly calling her a "stupid bitch" who was going to be treated like a "bad girl." Cathy reported that Lyons was about to rape her again when the officers crashed through the door.

Cathy's body bore fresh injuries and ones that were in various stages of healing. Her wounds included abrasions, lesions, bruises, swelling, a recently

chipped tooth, black eyes, a fractured nose, and strangulation marks. She also coughed up blood, had blood in her urine, had been previously bleeding from her anus, and had blood in one of her eardrums that had ruptured. Cathy reported that Lyons had hit her, kicked her, poured hot water on her, put her in a bathtub laced with household cleaners, pulled her by the hair, and slammed her head against the sink. Cathy also recounted being vaginally assaulted on the day the officers arrived and anally assaulted three days before. Lyons even threatened to kill Cathy or have his family kill her if she told anyone.

After the jury returned a verdict of guilty, the trial court heard punishment and enhancement evidence. After the trial court found the State's enhancements to be true, it sentenced Lyons to sixty years' confinement. This appeal followed.

III. DISCUSSION

A. Sufficiency of the Evidence to Support Jury's Household Finding

In part of his first point, Lyons argues that the evidence is insufficient to support the jury's finding that he was a member of Cathy's household. We disagree.

1. Standard of Review

In our due-process review of the sufficiency of the evidence to support a conviction, we view all of the evidence in the light most favorable to the verdict to determine whether any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. *Jackson v. Virginia*, 443 U.S.

307, 319, 99 S. Ct. 2781, 2789 (1979); *Jenkins v. State*, 493 S.W.3d 583, 599 (Tex. Crim. App. 2016).

This standard gives full play to the responsibility of the trier of fact to resolve 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, 99 S. Ct. at 2789; *Jenkins*, 493 S.W.3d at 599.

The trier of fact is the sole judge of the weight and credibility of the evidence. *See* Tex. Code Crim. Proc. Ann. art. 38.04 (West 1979); *Blea v. State*, 483 S.W.3d 29, 33 (Tex. Crim. App. 2016). Thus, when performing an evidentiary sufficiency review, we may not re-evaluate the weight and credibility of the evidence and substitute our judgment for that of the factfinder. *See Montgomery v. State*, 369 S.W.3d 188, 192 (Tex. Crim. App. 2012). Instead, we determine whether the necessary inferences are reasonable based upon the cumulative force of the evidence when viewed in the light most favorable to the verdict. *Murray v. State*, 457 S.W.3d 446, 448 (Tex. Crim. App.), *cert. denied*, 136 S. Ct. 198 (2015). We must presume that the factfinder resolved any conflicting inferences in favor of the verdict and defer to that resolution. *Id.* at 448–49; *see Blea*, 483 S.W.3d at 33.

To determine whether the State has met its burden under *Jackson* to prove a defendant's guilt beyond a reasonable doubt, we compare the elements of the crime as defined by the hypothetically correct jury charge to the evidence adduced at trial. *See Jenkins*, 493 S.W.3d at 599; *Crabtree v. State*, 389 S.W.3d

820, 824 (Tex. Crim. App. 2012) ("The essential elements of the crime are determined by state law."). Such a charge is one that accurately sets out the law, is authorized by the indictment, does not unnecessarily increase the State's burden of proof or restrict the State's theories of liability, and adequately describes the particular offense for which the defendant was tried. *Jenkins*, 493 S.W.3d at 599. The law as authorized by the indictment means the statutory elements of the charged offense as modified by the factual details and legal theories contained in the charging instrument. *See id.*; *see also Rabb v. State*, 434 S.W.3d 613, 616 (Tex. Crim. App. 2014) ("When the State pleads a specific element of a penal offense that has statutory alternatives for that element, the sufficiency of the evidence will be measured by the element that was actually pleaded, and not any alternative statutory elements.").

2. Household Member

In the portion dispositive of this point, the indictment alleged that Lyons committed the felony offense of assault against a household member pursuant to Penal Code section 22.01(b)(2)(A). *See* Tex. Penal Code Ann. § 22.01(b)(2)(A) (West Supp. 2016). Thus, in order to prove that Lyons assaulted a household member, the State had to prove that (1) Lyons "intentionally, knowingly, or recklessly cause[d] bodily injury," (2) to "a member of the defendant's family or household," and (3) had to show "on the trial of the offense that the defendant has been previously convicted of an offense" under another statutory family-

violence provision. *Id*. Lyons challenges only the element that he was a member of Cathy's household.

The term "household," as used by Penal Code section 22.01(b)(2), includes persons living together in the same dwelling regardless of whether they are related to one another. Tex. Penal Code Ann. § 22.01(e)(2) (West 2002); Tex. Fam. Code Ann. § 71.005 (West 2014); *see Shah v. State*, 414 S.W.3d 808, 813 (Tex. App.—Houston [1st Dist.] 2013, pet ref'd). In *Shah*, the complainant testified that the defendant was "living" with him in an apartment at the time of the assault and that the defendant had moved some of his personal items into the apartment. *Shah*, 414 S.W.3d at 813. The complainant also testified that the defendant was staying in the apartment every night. *Id.* The court held that despite inconsistencies in the complainant's testimony—including claiming that the apartment was "his" and that he had given the defendant "permission" to stay—the evidence was sufficient to support that the defendant was "living" with the complainant for purposes of Penal Code section 22.01(b)(2). *Id.*

Here, viewing the evidence in a light most favorable to the jury's verdict, the record reveals that Lyons was living with Cathy. Indeed, Cathy testified that Lyons moved his clothing and TVs into her apartment, that he stayed at her apartment "pretty much every night," that "he never left" after the first night he arrived, and that he went to and from work during his time at her apartment—which lasted roughly four months.

Lyons argues that because Cathy testified that he was staying at her apartment against her will and that he basically treated her like a prisoner, the evidence is insufficient to support the jury's verdict. But what Lyons only does by this argument is highlight that Cathy may have had inconsistencies in her testimony. As the sole judge of the weight and credibility of witness testimony, it was the province of the jury to resolve any such inconsistencies or conflicts in the testimony, to weigh the evidence, and to draw reasonable inferences from basic facts to ultimate facts. *See Clayton v. State*, 235 S.W.3d 772, 778 (Tex. Crim. App. 2007) (stating reviewing court presumes factfinder resolved any conflicting inferences in favor of verdict and defers to that determination).

When viewing all of the evidence in the light most favorable to the verdict, we conclude that a rational factfinder could have determined that Lyons and Cathy were "living together in the same dwelling" when Lyons assaulted Cathy. Tex. Penal Code Ann. § 22.01(e)(2). We therefore hold that the State presented sufficient evidence that Lyons and Cathy were members of the same "household," and thus we overrule this portion of Lyons's first point. *See Shah*, 414 S.W.3d at 813 (holding evidence sufficient to prove defendant was "living" with complainant where defendant had moved personal items into apartment and stayed in apartment almost every night). Because we hold that the evidence is sufficient to prove that Lyons and Cathy lived in the same household, we need not address the remainder of the point regarding his argument that the evidence is insufficient to support that he and Cathy were in a dating relationship. *See*

Tex. R. App. P. 47.1 (stating that an appellate court must address every issue necessary for final disposition of appeal).

B. Admission of Evidence

In his second, third, and fourth points, Lyons argues that the trial court abused its discretion by admitting certain evidence. Lyons's second point involves a claim that the trial court erroneously overruled his objection to a detective's testimony that included hearsay statements from Cathy's mother. His third point focuses on the trial court's admission of multiple officers' testimony regarding what constitutes a "family" or domestic relationship. And in his fourth point, Lyons complains of testimony relating to a detective's "risk assessment."

1. Standard of Review

We review a trial court's decision to admit evidence under an abuse-of-discretion standard. *See Guzman v. State*, 955 S.W.2d 85, 89 (Tex. Crim. App. 1997); *Montgomery v. State*, 810 S.W.2d 372, 391 (Tex. Crim. App. 1991) (op. on reh'g). Under this standard, a trial court enjoys "wide latitude to exclude, or, particularly in view of the presumption of admissibility of relevant evidence, not to exclude" evidence. *Montgomery*, 810 S.W.2d at 390. A trial court abuses its discretion in admitting evidence only if its ruling is so clearly wrong that it lies outside the zone of reasonable disagreement. *Id.* at 391; *see also Tillman v. State*, 354 S.W.3d 425, 435 (Tex. Crim. App. 2011). In other words, an appellate court must uphold the trial court's ruling if it is reasonably supported by the

record and is correct under any theory of law applicable to the case. *See Carrasco v. State*, 154 S.W.3d 127, 129 (Tex. Crim. App. 2005).

2. Hearsay Statements

In his second point, Lyons argues that the trial court abused its discretion by allowing a detective to testify that Cathy's mother had told the detective that she had seen Cathy with bruises on her, that she was unable to make contact with Cathy, that she worried about Cathy, that Cathy had recently been sodomized by Lyons, and that she believed he had been abusing Cathy.

Hearsay is a statement, other than one made by the declarant while testifying at a trial or hearing, offered in evidence to prove the truth of the matter asserted. Tex. R. Evid. 801(d). In order for hearsay to be admissible, it must fit into an exception provided by a statute or the Rules of Evidence. Tex. R. Evid. 802. One such exception is Rule 803(2), the excited utterance exception.

An excited utterance is "[a] statement relating to a startling event or condition, made while the declarant was under the stress of excitement that it caused." Tex. R. Evid. 803(2); *Salazar v. State*, 38 S.W.3d 141, 154 (Tex. Crim. App.), *cert. denied*, 534 U.S. 855 (2001). The basis for the excited-utterance exception is "a psychological one, namely, the fact that when a man is in the instant grip of violent emotion, excitement or pain, he ordinarily loses the capacity for reflection necessary to the fabrication of a falsehood and the 'truth will [come] out.'" *Evans v. State*, 480 S.W.2d 387, 389 (Tex. Crim. App. 1972). In other words, the statement is trustworthy because it represents an event speaking

through the person rather than the person speaking about the event. *Ricondo v. State*, 475 S.W.2d 793, 796 (Tex. Crim. App. 1971).

Here, the trial court could have concluded that the mother's statements to the officers were made during a moment of extreme excitement. Cathy's mother had called the police to assist her daughter as directed by Cathy's text, but the officers initially found no one at Cathy's apartment. At that point, Cathy's mother became startled and feared for Cathy's safety. One testifying officer described Cathy's mother as being "extremely panicked and frightened." Another officer described her as being worried, visibly concerned, and excited about the ongoing ordeal. At one point, the mother told the officers that they needed to kick in Cathy's apartment door to make sure that she was okay. The trial court could have found that the mother's statements were made as she was dominated by emotions, excitement, or fear upon discovering that police were unable to initially contact Cathy. *See Zuliani v. State*, 97 S.W.3d 589, 595 (Tex. Crim. App. 2003). Because the record supports the trial court's ruling that the complained-of statements were admissible as excited utterances, we cannot conclude that it abused its discretion in finding such. We overrule Lyons's second point.

3. Opinion Testimony

In his third point, Lyons argues that the trial court abused its discretion by allowing "a detective [to] testify[] as to [an] opinion of what constitutes a family relationship." Lyons does not indicate what testimony he is specifically objecting to but does point to two places in the record where both Corporal Kim Parker and

Detective Coty Bush of the Euless Police Department testified about their opinions regarding what constituted a "household."

A trial court's determination as to the admissibility of expert testimony is governed by an abuse-of-discretion standard. *Montgomery*, 810 S.W.2d at 391. An appellate court must affirm a trial court's ruling if it was at least within the "zone of reasonable disagreement." *Id.* We consider the ruling in light of what was before the trial court at the time it made the ruling. *Billodeau v. State*, 277 S.W.3d 34, 39 (Tex. Crim. App. 2009).

Admissibility of expert testimony is governed by rule 702 of the Texas Rules of Evidence, which states,

> A witness who is qualified as an expert by knowledge, skill, experience, training, or education may testify in the form of an opinion or otherwise if the expert's scientific, technical, or other specialized knowledge will help the trier of fact to understand the evidence or to determine a fact in issue.

Tex. R. Evid. 702; *Tillman*, 354 S.W.3d at 435.

The threshold determination is whether the proponent of the expert testimony proved by clear and convincing evidence that the testimony is "sufficiently reliable and relevant to help the jury" in understanding the evidence or determining an issue of fact. *Tillman*, 354 S.W.3d at 435 (*citing Kelly v. State*, 824 S.W.2d 568, 572 (Tex. Crim. App. 1992)). Expert testimony is relevant or "fit[s]" the case if it assists the trier of fact and is sufficiently tied to the facts of the case. *Tillman*, 354 S.W.3d at 438; *Jordan v. State*, 928 S.W.2d 550, 555 (Tex. Crim. App. 1996); *see* Tex. R. Evid. 702.

Here, the evidence showed that Parker, in addition to being a certified peace officer, is a licensed physiotherapist who has significant training and experience regarding family-violence offenses. It was certainly within the zone of reasonable disagreement whether she was qualified to express her opinion on what constituted a domestic, or "household," relationship, and that testimony "fits" this present case. *See Tillman*, 354 S.W.3d at 435. Thus, the trial court did not abuse its discretion by allowing Parker to testify as such.

As to Bush, the trial court had before it evidence that Bush was a member of the Family Crimes Unit, that she possessed specific training in the fields of domestic and family violence, and that she had personally interacted with victims of assault "many, many times." It was certainly within the zone of reasonable disagreement whether Bush was qualified to express her opinion on what constituted a domestic, or "household" relationship, and that testimony "fits" this present case. *Id.* Thus, the trial court did not abuse its discretion by allowing Bush to testify as such.

We hold that the trial court did not abuse its discretion by allowing either of these witnesses to testify to what constituted a domestic, or "household" living arrangement. *See Lessner v. State*, No. 02-15-00400-CR, 2016 WL 4473263, at *2–4 (Tex. App.—Fort Worth Aug. 25, 2016, no pet.) (mem. op., not designated for publication) (upholding admission of expert testimony pertaining to family violence victims). We overrule Lyons's third issue.

4. Opinion About Risk Assessment

In his fourth point, Lyons argues that the trial court abused its discretion by overruling his objection to Parker's testimony regarding her "risk assessment" of Cathy. But as the State points out, the only objection Lyons urged at trial was "I'm going to object. This wasn't part of our hearing." Lyons's objection wholly failed to state a legal basis for his complaint and thus he has forfeited any review of this error on appeal.

It is well established that in order to preserve an issue for appeal, a timely objection must be made that states the specific ground of objection if the specific ground was not apparent from the context. Tex. R. App. P. 33.1(a)(1)(A), (B); Tex. R. Evid. 103(a)(1); *Heidelberg v. State*, 144 S.W.3d 535, 537 (Tex. Crim. App. 2004). When an objection is not specific, and the legal basis is not obvious, it does not serve the purpose of the contemporaneous-objection rule for an appellate court to reach the merits of a forfeitable issue that is essentially raised for the first time on appeal. *Aldrich v. State*, 104 S.W.3d 890, 894 (Tex. Crim. App. 2003). We overrule Lyons's fourth point.

C. Enhancement Allegations

In his fifth point, Lyons argues that the trial court improperly enhanced his punishment. Specifically, Lyons argues that the State failed to prove that a prior Florida conviction and a prior Tennessee conviction were his. The State argues that it presented evidence sufficient to connect Lyons to these convictions.

During punishment, the State proffered two out-of-state prior convictions. In addition to the priors, the State also introduced Tarrant County documents related to Lyons. The documents pertaining to the Florida conviction show Lyons's first and last name, his middle initial, his race and sex, and his birth year—but the birthdate is off by one day in comparison to the Tarrant County documents. The Florida pen packet attached to the conviction contains clear color front-facing and profile photographs of Lyons.

Regarding the documents attached to the Tennessee conviction, the name, race, and sex all match those in Tarrant County documents related to Lyons. The Tennessee documents also contain a match for Lyons's date of birth and Social Security Number. Additionally, the Tennessee documents include black-and-white mug shots of Lyons as well as numerous samples of Lyons's signature. The State did not establish that the fingerprint cards from either the Tennessee or Florida convictions matched Lyons's fingerprint samples from Tarrant County, but the State did establish that the fingerprint data from a prior conviction in Tarrant County matched a known sample collected in this case. The prior conviction contains Lyons's name, date of birth, photograph, and signature, as well as other identifiers.

To establish that a defendant has been convicted of a prior offense, the State must prove beyond a reasonable doubt that (1) a prior conviction exists, and (2) the defendant is linked to that conviction. *Flowers v. State*, 220 S.W.3d 919, 921 (Tex. Crim. App. 2007). No specific document or mode of proof is

required to prove these two elements. *Id.* Any type of evidence, documentary or testimonial, might suffice to prove this connection. *Id.* at 922. As the Texas Court of Criminal Appeals has explained, the proof that is adduced to establish this connection resembles a jigsaw puzzle—the trier of fact fits the pieces together, weighs the credibility of each piece, and determines if the pieces fit together sufficiently to complete the puzzle. *Id.* at 923 (*citing Human v. State*, 749 S.W.2d 832, 835–36 (Tex. Crim. App. 1988) (op. on reh'g)).

Here, the State sufficiently linked Lyons's previous convictions to the documents admitted at the punishment hearing. The documents all bear his name, basic identifiers, and photographic comparisons. *See Newman v. State*, No. 02-09-00243-CR, 2010 WL 2636110, at *4 (Tex. App.—Fort Worth 2010, pet. ref'd) (mem. op., not designated for publication) (holding that despite illegible fingerprints, defendant was sufficiently connected to priors via Criminal Identification Number, identical name, charge, and fingerprints connected to other crimes containing identifying information). In all, the State connected Lyons to the enhancement priors in Florida and Tennessee by name, date of birth, photographs, signatures, and additional identifiers. We hold that the State proved beyond a reasonable doubt that the Florida and Tennessee prior convictions existed and that Lyons is linked to those convictions. *See Flowers*, 220 S.W.3d at 921–22; *Newman*, 2010 WL 2636110, at *4. We overrule Lyons's fifth point.

IV. CONCLUSION

Having overruled Lyons's five points on appeal, we affirm the trial court's judgment.

/s/ Bill Meier
BILL MEIER
JUSTICE

PANEL: MEIER, SUDDERTH, and PITTMAN, JJ.

DO NOT PUBLISH
Tex. R. App. P. 47.2(b)

DELIVERED: October 5, 2017