the Jasuta / Schulman report

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TIBA's Case of the Week

Court of Criminal Appeals

Case Name: ***Danielle Leigh Edwards v. The State of Texas***

- **OFFENSE**: Injury to a Child
- **COUNTY**: Caldwell
- **COURT OF APPEALS**: Austin 2021
- **C/A CITATION**: Not Designated for Publication
- **C/A RESULT**: Conviction Reversed
- **CCA. CASE No**. PD-0585-21 **DATE OF OPINION**: February 15, 2023
- **DISPOSITION**: Court of Appeals Reversed
- **OPINION**: Judge Michelle Slaughter **VOTE**: 9-0
- **TRIAL COURT**: 421st D/C; F.C. "Chris" Schneider
- **LAWYERS**: Susan Schoon (Defense); Chase G. Goetz (State)

(**Background Facts**):

Baby L.B. was born to her mother (Appellant) and father, Morris Branton, on June 23, 2017. The record is unclear as to when Child Protective Services ("CPS") opened a child abuse investigation of Appellant. In addition to L.B., Appellant had two other children. It is unclear which child was the victim of the abuse allegations. Nevertheless, at some point, CPS opened an investigation into Appellant for suspected child abuse. During the course of the investigation, in June 2018, Appellant tested positive for cocaine ("The record is also unclear as to why Appellant took a drug test") and admitted to CPS that she had used cocaine several times in the past two weeks. In response, CPS removed L.B. from Appellant's care and requested that a hair-follicle test be conducted on L.B. to evaluate whether she had been exposed to cocaine. The hair-follicle test, which identifies any drugs consumed within the past 90 days, revealed that L.B. had a significant amount of cocaine and cocaine metabolites in her system, with results exceeding 20,000

picograms per milligram, the maximum reportable amount. Appellant was subsequently indicted for injury to a child for recklessly causing L.B. a "serious mental deficiency, impairment, or injury" by "allowing [L.B.] access to cocaine and the infant was able to ingest the cocaine[.]"

Ed Note (**The Testimony**): At Appellant's trial, the State called Bruce Jeffries, the owner of a drug screening and assessment center. Jeffries testified that he was "shocked" by the level of cocaine in L.B.'s system, which was "indicative of an addict doing it all the time." He further testified about the possible effects and risks of a baby's ingestion of high levels of cocaine. Jeffries explained that the amount of cocaine L.B. had consumed "is going to cause, you know, withdrawals." He further testified that potential short-term effects "could" include "loss of appetite, psychological effects, your heart racing." He also noted that there is the possibility of overdose and death. With respect to long-term effects, Jeffries explained that cocaine usage "could" lead to seizures, possible hardening of the right side of the heart, an increased risk of heart attack, and possible mental or physical developmental delays. Jane Davis, L.B.'s guardian beginning June 21, 2018, testified about L.B.'s demeanor following her removal from Appellant's care. Davis described L.B. as "very small for her age . . . very clingy, [and] very fussy." L.B. was evaluated for developmental delays but no delays were ever noticed by Davis or L.B.'s pediatrician. Davis testified that she had not noticed any developmental delays in L.B. at the time of trial in October 2019. Branton, L.B.'s father, testified that before L.B. was removed by CPS, he, Appellant, and another person lived in the home with L.B. He explained that Appellant was L.B.'s primary caregiver and would breastfeed her. To Branton's knowledge, the friend who lived with them did not take care of L.B. and did not expose L.B. to cocaine.

[531.01 **Sufficiency of the Evidence / Assault / Injury to a Child**]: On direct appeal, Appellant argued that the evidence was insufficient to support the jury's finding that L.B. suffered a "serious mental deficiency, impairment, or injury." The Court of Appeals rejected this argument, holding that the evidence was sufficient to prove that Appellant "recklessly caused L.B. to ingest an amount of cocaine sufficient to make her addicted and experience withdrawal and, therefore, caused L.B. to suffer a serious mental deficiency, impairment, or injury." The Court of Appeals recognized that the Penal Code does not define the phrase "serious mental deficiency, impairment, or injury," so the court instead relied on the ordinary dictionary definitions for those terms as cited in ***Ex parte Hammons***, 628 S.W.3d 335 (Tex.App. - Waco 2021)(see , Vol. 29, No. 20; 05/31/2021), vacated on other grounds in ***Ex parte Hammons***, 631 S.W.3d 715 (Tex.Cr.App. 2021)(see , Vol. 29, No. 39; 10/11/2021). The court also pointed to ***Stuhler v. State***, 218 S.W.3d 706 (Tex.Cr.App. 2007)(see , Vol. 15, No. 3; 01/29/2007), and ***Franco v. State***, No. 13-14-00108-CR, 2016 WL 3389967 (Tex.App. - Corpus Christi-Edinburg June 16, 2016)(not designated for publication). In both cases, the child-victim was diagnosed with post-traumatic stress disorder ("PTSD"), which served as the underlying diagnosis for the serious mental deficiency, impairment, or injury. Id. Finally, the court pointed to the National Institute on Drug Abuse's ("NIDA") definition of addiction "as a chronic, relapsing disorder characterized by compulsive drug seeking . . . and long-lasting changes in the brain," and ***Tarr v. Lantana Southwest Homeowners' Association***, No. 03-14-00714-CV (Tex.App. - Austin 2016), wherein the court previously recognized that drug addiction may constitute an

impairment in the context of disability law. Ultimately, the court held that the evidence of L.B.'s cocaine addiction and withdrawals satisfied the element of serious mental deficiency, impairment, or injury, and it upheld Appellant's conviction. The Court of Criminal Appeals granted Appellant's PDR to determine whether "the Court of Appeals erred in holding that evidence of a high level of cocaine in a child's body alone is sufficient to prove that the child suffered 'serious mental deficiency, impairment, or injury,' as required for conviction of injury to a child."

Holding: Even viewing the evidence in a light most favorable to the verdict and allowing for the drawing of reasonable inferences by the jury, the State's evidence was insufficient to demonstrate that L.B. suffered a serious mental deficiency, impairment, or injury as a result of ingesting cocaine through Appellant's breastmilk. *** It is unquestionable that the State produced sufficient evidence to prove that L.B. had ingested a large amount of cocaine. The hair-follicle test and other testimony clearly established that fact. The State's witness also established that the amount of cocaine in L.B.'s system "was indicative of an addict" and would result in withdrawals. Thereafter, however, the witness testified in general or hypothetical terms about how ingestion of cocaine could be harmful. *** The only testimony about the health, well-being, and behavior of L.B. was from L.B.'s guardian, who testified that L.B. was small for her age and was excessively fussy and clingy. No one testified that these factors demonstrated that L.B. suffered from a "serious mental deficiency, impairment, or injury." In fact, testimony from L.B.'s guardian established that L.B. was not experiencing any developmental delays. Accordingly, the State presented no evidence that the cocaine L.B. ingested caused her "serious mental deficiency, impairment, or injury." *** The State nevertheless contends that the nature of drug addiction and its harmful effects are such common knowledge that the jurors here could have simply inferred the existence of serious mental deficiency, impairment, or injury, notwithstanding the lack of any testimony directly addressing that issue. We disagree. While jurors may have some degree of personal knowledge regarding drug addiction, under these circumstances, and on these facts, the jurors would have had to speculate in finding that L.B.'s exposure to cocaine and any resulting withdrawal symptoms actually caused her to suffer "serious mental deficiency, impairment, or injury." That is to say, the average juror would not have a common-sense understanding of precisely how drug addiction and withdrawals affect a child's development, cognitive functioning, or mental health. Therefore, jurors could not, merely from the evidence presented here, draw a reasonable inference about the existence of a serious mental deficiency, impairment, or injury. ***Hooper v. State***, 214 S.W.3d 9 (Tex.Cr.App. 2007)(see ℘, Vol. 15, No. 4; 02/05/2007). *** [***Stuhler*** and ***Franco***] are readily distinguishable from the facts before us. In both cases, the child-victim suffered PTSD as a result of physical abuse. There was no challenge in either case to the sufficiency of the evidence to show that PTSD was a "serious mental deficiency, impairment, or injury." *** Thus, the evidentiary link proving that the physical abuse caused serious mental deficiency, impairment, or injury to the child-victim was established. Therefore, neither ***Stuhler*** nor ***Franco*** are on point for the issue of whether addiction and withdrawal symptoms constitute serious mental deficiency, impairment, or injury, and the Court of Appeals' reliance on them is misplaced. *** The Court of Appeals also pointed to NIDA's definition of drug addiction as a "chronic" condition with "long-lasting changes in the brain," as

well as ***Tarr***'s recognition that drug addiction may constitute an impairment within disability law. *** However, no such definition provided by NIDA (or any scientific definition of drug addiction, for that matter) was presented to the jury and was thus not available for the jury's consideration. Further, the holdings in ***Tarr***, which relate to disability law, lack precedential value for the present case. We do not find these sources persuasive.

Ed Note: Regarding the possibility that Appellant's conviction could be reformed under ***Thornton v. State***, 425 S.W.3d 289 (Tex.Cr.App. 2014)(see ☙, Vol. 22, No. 14; 04/07/2014), the Court of Appeals also held that, "it is at least theoretically possible that Appellant's conviction could be reformed to some lesser-included offense." *** "Because the parties have not had the opportunity to brief this issue, and the Court of Appeals has not had occasion to consider it, we remand the cause for further proceedings consistent with this opinion.

Sidebars

(**Troy McKinney**)(Guest Commentator) I am, cynically, not sure whether it is more surprising that this case resulted in a finding of legally insufficient evidence (with which I agree) or that it was unanimous. On a more practical note, I wonder what lesser included offenses (not other offenses) could be applicable to this case despite the court's statement that it is "theoretically possible" that there may be sufficient evidence of a lesser included offense? Though mere bodily injury has a lower punishment range than "serious mental deficiency, impairment, or deficiency," there does not appear to be any evidence of any actual "mere" bodily injury -- at least not evidence set out in the CCA's decision. Even a lower mental state of negligence, for which there is a lesser punishment, still requires evidence of causation that the CCA's opinion makes clear is not present. The only thing I can imagine might be applicable is a Class C assault offense of intentionally or knowingly threatening another with imminent bodily injury, a result that I am sure this D would gladly accept, though it may still require causation evidence that the CCA found lacking. That said, I doubt that the Class C offense is a lesser included offense because it contains an element "threatening" that is not included in the charged offense.

(**David A. Schulman**) I read this opinion as being a complete legal encapsulization of a generic statement, "*well, you proved the cocaine **might** have caused some of those problems, but you didn't prove that it **actually** caused any those problems*." In that regard, I agree completely and am not overly surprised. The opinion came down exactly like it should. Along those lines, the Court also properly points out that "our holding should not be interpreted as categorically indicating that a 'serious mental deficiency, impairment, or injury' can never be proven for a child-victim who ingests a large amount of drugs and/or who experiences drug addiction and withdrawal. Rather, this holding is based on the evidentiary gap in this case . . .."

(**John G. Jasuta**) The opinion is right. See Troy's comment for an analysis of what may well happen.