Affirmed and Opinion filed December 21, 2000.

In The

Fourteenth Court of Appeals

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NO. 14-99-00061-CR
NO. 14-99-00062-CR

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LLOYD ALTON SANDLES, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the 228th District Court
Harris County, Texas
Trial Court Cause Nos. 791,345 and 791,772

O P I N I O N

Appellant appeals from two verdicts finding him guilty of aggravated robbery. Because sufficient evidence supports the jury's findings, we affirm the trial court's judgments.

I. Background

Appellant was charged by indictment with two counts of aggravated robbery, trial cause No. 791,345 (appellate cause No. 14-99-00061-CR) and trial cause No. 791,772 (appellate cause No. 14-99-00062-CR), committed on or about August 22, 1998, and August 25, 1998.

The evidence shows that on the evening of August 22, Orfelio Serrato was working at a shoe store on West Gray with an employee, Linda Rivera. At closing time, about 8:55 p.m., appellant entered the store. Serrato recognized appellant. They previously had worked at neighboring shoe stores at a mall, and Serrato at one time worked with appellant's wife. Appellant approached the cash register where Serrato and Rivera were standing. Serrato said "hello" and asked how appellant was doing. Appellant told them he was robbing them. Appellant pulled a pocket knife out of his pocket, unfolded the blade, and held it to his side, showing the blade to Serrato and Rivera. Rivera described the knife's blade as being four or five inches.

Serrato testified that he became nervous when he saw the knife. Appellant came behind the counter to the register and told Serrato to open the register. Appellant told Serrato to give the door keys to Rivera so she could lock the front door. Serrato gave some keys to Rivera, who went to the front door, but rather than lock the store, Rivera ran out the door. Serrato opened the cash register as ordered. Appellant stood behind Serrato holding the knife at appellant's side. Appellant told Serrato to put the money in a bag. After Serrato did not move, however, appellant took the money from one register and told Serrato to open the other register. Serrato opened the second register, which was empty. Appellant then ran out of the store, and Serrato called 911.

The evidence further showed that on August 25, 1998, Trenette Allen was working at a shoe store near Wesleyan and Bissonnet. At about 8:55 p.m., appellant entered the store and told Allen to give him the money. Allen testified that appellant "flicked" a knife, which she described as a "switch blade type knife," that was about "two or three inches." She also described the knife as a "paring knife, that type of knife." Allen told the jury that appellant held the knife by his body near his chest, "so no one from the outside could have seen it, just me." She testified that she was afraid. She opened the first register, gave appellant the money, and then emptied the second register. Appellant fled with the money, and Allen called 911.

Serrato, Rivera, and Allen picked appellant out of a photo spread as the robber. Police Sgt. DeFee testified that a knife is a deadly weapon and is capable of causing serious bodily injury or death.

Appellant's wife testified that appellant was with her the night of August 22, 1998, and appellant's nephew testified that appellant was with him at about 9 p.m. August 25, 1998. The jurors found appellant guilty and made a deadly weapon finding on each charge and assessed punishment at forty years in prison on the August 22 robbery, cause No. 791345, and thirty years on the August 25 robbery, cause No. 791772.

II. Discussion

Appellant complains, in four points of error in connection with each appeal, that the evidence is legally and factually insufficient to support the verdicts and the deadly weapon findings.

When we review the legal sufficiency of the evidence, we view the evidence in the light most favorable to the verdict and determine whether any rational trier of fact could have found all the essential elements of the crime beyond a reasonable doubt. *See Jackson v. Virginia*, 443 U.S. 307, 319 (1979). We apply this standard to both direct and circumstantial evidence cases. *See Cambers v. State*, 711 S.W.2d 240, 245 (Tex. Crim. App. 1986). The jury is the sole trier of fact and may judge the credibility of a witness, reconcile conflicts in testimony, and may accept or reject any or all of the evidence on either side. *See Chambers v. State*, 805 S.W.2d 459, 461 (Tex. Crim. App. 1991). When we review the factual sufficiency of the evidence, we view all of the evidence in a neutral light, rather than in the light most favorable to the prosecution, and set aside the verdict only if it is so contrary to the overwhelming weight to the evidence as to be clearly wrong and unjust. *See Johnson v. State*, 23 S.W.3d 1, 6–7 (Tex. Crim. App. 2000). We also may set aside the verdict if the evidence supporting it is so weak that the result is clearly wrong and manifestly unjust. *See id.* at 11. We review the jury's weighing of the evidence and may disagree with its determination; we must, however, employ appropriate deference to avoid substituting our judgment for that of the jury. *See id.* at 7. Any evaluation should not substantially intrude upon the jury's role as the sole judge of the weight and credibility given to witness testimony. *See id.*

A person commits robbery if, in the course of committing theft as defined by Chapter 31 of the Penal Code and with the intent to obtain or maintain control of the property, he intentionally or knowingly threatens or places another in fear of imminent bodily injury or death. *See* TEX. PEN. CODE ANN. §

29.02 (Vernon 1994). A robbery becomes aggravated when a person uses or exhibits a deadly weapon. *See* TEX. PEN. CODE ANN. § 29.03(a)(2)(Vernon 1994). A deadly weapon is anything manifestly designed for the purpose of inflicting death or serious bodily injury or anything that in the manner of its use or intended use is capable of causing death or serious bodily injury. *See* TEX. PEN. CODE ANN. § 1.07(a)(17)(Vernon 1994). A knife is not a deadly weapon per se. *See Thomas v. State*, 821 S.W.2d 616, 619 (Tex. Crim. App. 1991). The State must prove, therefore, that the knife was, in the manner of its use or intended use, capable of causing death or serious bodily injury. *See id.* at 620. Wounds need not be inflicted before a knife can be considered a deadly weapon. *See Davidson v. State*, 602 S.W.2d 272, 273 (Tex. Crim. App. 1980). If no one is injured, the State must prove that the knife's capacity to cause serious injury or death by the manner of its use, the size of the blade, threats made by the accused, or the proximity of the accused and the victim. *See Petrick v. State*, 832 S.W.2d 767, 770 (Tex. App.—Houston [14th Dist.] 1992, no pet.). A victim's testimony that he was frightened by the knife will help support a finding that a knife was a deadly weapon. *See id.* A police officer's testimony that a knife could cause bodily injury or death also may help support a finding that a knife is a deadly weapon. *See Hicks v. State*, 827 S.W.2d 686, 690 (Tex. App.—Houston [1st Dist.] 1992, no pet.).

Appellant complains primarily that the evidence is legally and factually insufficient to prove he used a deadly weapon and that the evidence will not support the either the aggravating element for the aggravated robbery charges or the deadly weapon findings. Appellant argues that the evidence shows only that he held a small knife in his hand, with only the blade exposed, and that appellant held the knife close to appellant's body each time. None of the victims testified that he or she feared serious bodily injury or death.

A victim does not have to testify specifically that he or she feared serious bodily injury or death. The State may prove the elements of the offense and the aggravating element with circumstantial evidence. In connection with the August 22 robbery, Serrato testified that appellant was facing him and that when appellant opened the knife, Serrato became nervous. Appellant walked around the counter and stood behind Serrato and held the knife by appellant's side. Serrato identified State's exhibit No. 1 as the knife that appellant had used during the robbery, a knife with five-inch blade. As to the August 25 robbery, Allen

agreed that when appellant showed the knife and asked for money, she was placed in fear of imminent bodily injury or death. She testified that the knife, which she variously described as a switchblade type knife or a paring knife, had a blade about two to three inches long. She told jurors that appellant held it by appellant's body so she could see it but that no one outside the store could see it. Officer DeFee testified that a knife is a deadly weapon and is capable of causing serious bodily injury or death.

Legally and factually sufficient evidence supports the aggravating element and the deadly weapon finding for each robbery. Even though no one was injured in the robbery, the sufficient evidence shows that each knife was, in the manner it intended use, capable of causing death or serious bodily injury. Appellant stood in proximity to the complainants, and reasonable jurors could have determined that appellant showed each knife to coerce acquiescence on the part of the store employees. The folding pocket knife with a five-inch blade was introduced into evidence, and the other knife was described as having a two- or three-inch blade. A complainant in each robbery testified as to either fear or nervousness after the knives were shown. *See Billey v. State*, 895 S.W.2d 417 (Tex. App.—Amarillo 1995, no pet.) (holding that proof that accused exposed knife blade to victim during robbery helps support finding that accused intended to use knife in manner capable of causing death or serious bodily injury).

We overrule the four points of error with respect to the August 22 robbery (trial cause No. 791345, appellate cause No. 14-99-00061-CR) and the four points of error as to the August 25 robbery (trial cause No. 791772, appellate cause No. 14-99-00062-CR).

III. Conclusion

Having overruled the four points of error in connection with each appellate cause, we affirm the judgments of the trial court.

PER CURIAM

Judgment rendered and Opinion filed December 21, 2000.
Panel consists of Chief Justice Murphy, and Justices Amidei and Hudson.

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