



**COURT OF APPEALS
SECOND DISTRICT OF TEXAS
FORT WORTH**

NO. 02-16-00368-CR

PAUL GOVEA

APPELLANT

V.

THE STATE OF TEXAS

STATE

FROM THE 415TH DISTRICT COURT OF PARKER COUNTY
TRIAL COURT NO. CR16-0180

MEMORANDUM OPINION¹

I. INTRODUCTION

Appellant Paul Govea appeals the jury's deadly weapon finding from his evading arrest conviction. In two points, Govea argues that the evidence is insufficient to support the finding. We will affirm.

¹See Tex. R. App. P. 47.4.

II. BACKGROUND

On March 3, 2016, the State filed its indictment charging Govea with evading arrest. The indictment included felony-enhancement paragraphs. Later, the State sent notice that it intended to seek a deadly weapon finding, alleging that Govea had used his vehicle as a deadly weapon during the commission of evading arrest. After a jury was sworn, Govea entered a plea of not guilty. At trial, prior to opening statements, Govea stipulated to the first paragraph of the indictment, which included all elements of the evading arrest charge, but he did not stipulate to the deadly weapon language in the State's notice.

At trial, Texas Department of Public Safety Trooper Travis Alewine testified that on February 6, 2016, at approximately 9:30 a.m., he observed a red passenger car, later determined to be driven by Govea, traveling eastbound on I-20 going 95 miles per hour in a 75 mile-per-hour zone. Because he was traveling westbound, Alewine said that he had to turn around in order to pursue the car and that in order to catch up with Govea, he had to travel well over 100 miles per hour. As he approached Govea's car, Alewine activated his overhead lights.

According to Alewine, Govea then accelerated to over 100 miles per hour and began to drive on the improved shoulder on the right side of I-20, passing vehicles as he drove. Alewine testified that this conduct alone was dangerous because a vehicle may have been "broke[n] down ahead" or there may have been hitchhikers on the shoulder. Alewine averred that while Govea drove on

the shoulder, he passed multiple “eighteen[-]wheelers,” “two school buses,” and numerous other vehicles. By Alewine’s account, Govea was “weaving in and out of traffic” on I-20 and then, ultimately, Govea exited to a highway which consisted of two lanes without a divider.

While on the highway, according to Alewine, Govea passed several vehicles on the right and left shoulders and crossed over no-passing lines, effectively driving into oncoming traffic at times in the left lane. Govea also raced through several stoplights that were red as well as through stop signs without stopping. Alewine said that as Govea “blew” these traffic stops, he never noticed that Govea’s brake lights initiated.

Alewine said that from there, Govea continued into Weatherford, near the town’s square, where Govea lost control of his vehicle, veered up onto a sidewalk, and struck a construction advisory sign, damaging the entire right side of his vehicle. From there, Alewine said that Govea then began to drive down residential streets at speeds of 45 to 50 miles per hour. Soon after, Govea “[b]ottomed out” at an intersection, damaging his car and disabling it.

In addition to Alewine’s testimony, the State played video from Alewine’s dashboard camera. In the video, Govea can be seen driving on the shoulder of I-20 at a high rate of speed while passing vehicles and striking debris, sending the debris flying behind him. He can also be seen passing at least two school buses and several eighteen-wheelers. In all, for the nearly ten minutes that Govea raced along I-20, he passed more than sixty vehicles. The video depicts that

many of these vehicles were forced to take evasive action to prevent collision with Govea, Alewine, or another vehicle on the interstate. At one point, as Govea raced through traffic, one car was forced to jerk quickly toward the shoulder and brake forcefully. At another moment, after Govea effectively pinned himself to the shoulder because of a several-vehicle bottleneck, a truck with a horse trailer attached was forced to swerve to its right to avoid Govea as he abruptly wove through the cluster of vehicles, and then the truck had to immediately swerve to its left to prevent colliding with Alewine, causing the trailer to fishtail. Luckily, the driver was able to maintain control of his truck.

As Alewine described, the video depicts Govea suddenly exiting to a two-lane highway, where Govea continued his excessive speeds. He can also be seen weaving in and out of the two-way traffic, sometimes using the shoulder to pass vehicles while other times crossing over no-passing stripes and driving head-on into oncoming traffic before weaving back into the right-hand lane. Consistent with Alewine's testimony, Govea can also be seen racing through several stoplights and stop signs without any indication of yielding to crossing traffic. And, just as Alewine testified, Govea can be seen racing toward a town's square, where in a sudden moment, smoke and dust erupted. At that time, as Alewine approached and the smoke began to fade, Govea's vehicle can be seen between other cars, having fishtailed well past 90 degrees and having come to a complete stop. Govea can then be seen accelerating again down a residential street where, after driving several blocks, he "[b]ottomed out" twice while driving

through what appears to be a bumpy intersection. Govea's vehicle can then be seen creeping along, eventually driving across a four-lane highway, coasting into a parking lot, and nearly striking a parked truck. After coming to a complete stop, officers can be heard commanding Govea and his passenger to get out of the car. The video depicts that as he attempted to exit, Govea's car can be seen rolling back twice, nearly striking Alewine's patrol vehicle, which Alewine had pulled in directly behind Govea.

The State also introduced pictures of the construction sign that Govea struck near the town's square. The pictures display a construction sign that is mangled and partially down.

The jury found that Govea used his vehicle as a deadly weapon. After the punishment phase, and after the jury found the State's enhancements true, the jury assessed punishment at 40 years' confinement. The trial court rendered judgment accordingly, and this appeal followed.

III. DISCUSSION

In two points, Govea challenges the sufficiency of the evidence regarding the jury's deadly weapon finding.² Govea argues that his case is distinguishable

²Govea challenges the "legal" and "factual" sufficiency of the evidence. But the court of criminal appeals has held that there is no meaningful distinction between the legal sufficiency standard and the factual sufficiency standard as those standards relate to the State's burden to prove the elements of an offense beyond a reasonable doubt. *Brooks v. State*, 323 S.W.3d 893, 895, 912 (Tex. Crim. App. 2010) (overruling *Clewis v. State*, 922 S.W.2d 126, 131–32 (Tex. Crim. App. 1996)). Thus, the *Jackson* standard, which is explained in the standard of review section, is the "only standard that a reviewing court should

from other deadly weapon-finding cases where a vehicle is involved. See *Drichas v. State*, 175 S.W.3d 795, 798 (Tex. Crim. App. 2005); see also *Sierra v. State*, 280 S.W.3d 250, 256–57 (Tex. Crim. App. 2009). While we agree that the cases Govea cites are factually different than his case, we disagree that those differences establish that the jury’s deadly weapon finding was improper.

A. Standard of Review and Deadly Weapons

In our due process review of the sufficiency of the evidence to support a deadly weapon finding, we must review the record to determine whether, after viewing the evidence in the light most favorable to the finding, any rational trier of fact could have found beyond a reasonable doubt that the vehicle was used or exhibited as a deadly weapon. See *Brister v. State*, 449 S.W.3d 490, 493 (Tex. Crim. App. 2014); *Cates v. State*, 102 S.W.3d 735, 738 (Tex. Crim. App. 2003). An appellate court’s duty is not to reweigh the evidence but to act as a due process safeguard ensuring only the rationality of the factfinder. *Brister*, 449 S.W.3d at 493–94. When vehicles are at issue, the evidence is sufficient to support a deadly weapon finding if a rational jury could have concluded that the use of a vehicle posed an actual danger—that is, one that is “not simply hypothetical”—of death or serious bodily injury. See *Drichas*, 175 S.W.3d at 799;

apply in determining whether the evidence is sufficient to support each element of a criminal offense that the State is required to prove beyond a reasonable doubt.” *Brooks* at 912; see *Acosta v. State*, 429 S.W.3d 621, 624 (Tex. Crim. App. 2014) (“[W]e review the sufficiency of the evidence establishing the elements of a criminal offense under the single sufficiency standard set out in *Jackson v. Virginia*.”).

see also *Moore v. State*, No. PD-1056-16, 2017 WL 2457430, at *4 (Tex. Crim. App. June 7, 2017).

In *Drichas*, the court of criminal appeals pointed out that “[a] motor vehicle may become a deadly weapon if the manner of its use is capable of causing death or serious bodily injury.” *Drichas* at 798 (citations omitted). The *Drichas* court held that the motor vehicle in that case was used as a deadly weapon when the defendant drove the wrong way on a highway during a high-speed chase, failed to yield to oncoming vehicles, committed numerous traffic offenses, and abandoned the truck while it was still in motion. *Id.* at 797–98. The *Drichas* court also noted that “evidence that another motorist was on the highway at the same time and place as the defendant when the defendant drove in a dangerous manner” is sufficient to support a deadly weapon finding. *Id.* at 799.

In addition to the factors just discussed, evidence that the manner in which a person drove his vehicle placed an officer in actual danger of death or serious bodily injury supports a deadly weapon finding. *Drichas*, 175 S.W.3d at 798 (“Appellant’s manner of using . . . his truck posed a danger to pursuing officers and other motorists that was more than simply hypothetical; the danger was real . . . , particularly where appellant drove on the wrong side of the highway.”); *Duckett v. State*, No. 06-14-00060-CR, 2015 WL 996188, at *3 (Tex. App.—Texarkana Mar. 3, 2015, pet. ref’d) (mem. op., not designated for publication) (“[The defendant] put the pursuing law enforcement officers in actual danger.”).

Additionally, this court has previously considered several other factors in examining whether a defendant's driving was reckless or dangerous: (1) intoxication, (2) speeding, (3) disregarding traffic signs and signals, (4) driving erratically, and (5) failure to control the vehicle. *Cook v. State*, 328 S.W.3d 95, 100 (Tex. App.—Fort Worth 2010, pet. ref'd) (citations omitted); see *Tadsen v. State*, No. 02-15-00260-CR, 2016 WL 3569204, at *1 (Tex. App.—Fort Worth June 30, 2016, no pet.) (mem. op., not designated for publication).

B. The Evidence is Sufficient to Support a Deadly Weapon Finding

Viewing the evidence in the light most favorable to the jury's deadly weapon finding, the evidence demonstrates that Govea drove his car on I-20 in excess of 100 miles per hour in order to evade Alewine while there were numerous vehicles around him, including large eighteen-wheelers and at least two school buses. Govea repeatedly drove on the improved shoulder numerous times at high speeds, and of the more than sixty vehicles that he wove in-between as he shifted and raced from the right-hand shoulder of I-20 to either of the lanes and back upon the shoulder again, several of them were forced to take evasive actions in order to prevent colliding with Govea, Alewine, or another vehicle on the highway. At one point, because of Govea's evasive and stunt-like driving, Alewine became trapped behind, and nearly collided with, two eighteen-wheelers, including one that was carrying an oversized load. On another occasion, a truck towing a horse trailer had to take evasive actions both to prevent colliding with Govea and then to prevent colliding with Alewine—after

completing this maneuver, the truck's driver had to contend with the horse trailer's fishtailing.

After his high-speed antics on I-20, Govea abruptly exited to a two-lane highway with no divider, where he continued to weave in and through traffic at high speeds, sometimes driving on the shoulder to pass vehicles and at other times speeding into oncoming traffic before shifting back into the right-hand lane. While on the highway, Govea raced through several stop signs and red traffic lights with ill regard for any of the vehicles around him. Govea's only stop prior to his being apprehended was to crash through a construction sign and onto a sidewalk, a maneuver wherein Govea lost control of his vehicle and spun more than 90 degrees before coming to a stop. Govea then raced through a neighborhood before losing control of his vehicle and bottoming out twice, damaging his car so that it became inoperable. As his car lost power, Govea then coasted through a four-lane highway with disregard for other vehicles around him before coasting into a parking lot, where he nearly struck a parked truck. When Govea finally came to a stop and was ordered to get out of the car, his vehicle almost backed into Crane's vehicle twice.

This evidence is sufficient to establish that Govea used his vehicle in such a manner as to present an actual danger of serious bodily injury or death to the other drivers on the interstate, on the highway, in the residential area, on the four-lane road he coasted through, and in the parking lot. See *Drichas*, 175 S.W.3d at 798; *Daniel v. State*, 478 S.W.3d 773, 781 (Tex. App.—Fort Worth

2015, no pet.) (holding that appellant used his vehicle as a deadly weapon when he raced it on a “congested and busy street,” cutting off other cars and requiring other cars on the roadway to adjust, jumping between lanes, driving very aggressively and at more than twice the speed limit, and “coming within feet” of rear-ending another car).

Moreover, the evidence showed that the manner in which Govea drove his car placed Alewine in actual danger of death or serious bodily injury. See *Roppolo v. State*, No. 13-11-00437-CR, 2012 WL 3598736, at *2 (Tex. App.—Corpus Christi Aug. 22, 2012, pet. ref’d) (mem. op, not designated for publication) (“The evidence shows appellant actually endangered others as he led the police on a high-speed chase. As Sergeant Lopez followed appellant . . ., appellant drove to a parking-lot exit and ‘came to a very fast stop,’ forcing Sergeant Lopez to make an evasive maneuver with his police car.”); *Moore v. State*, No. 06-10-00173-CR, 2011 WL 3274840, at *3 (Tex. App.—Texarkana Aug. 2, 2011, no pet.) (mem. op., not designated for publication) (“[P]olice officers should not be excluded from the class of persons capable of being endangered by the driver of a fleeing vehicle.”).

Govea argues that the evidence establishes that he did not drive his car in a manner that placed others in danger of death or serious bodily injury because Alewine testified that he found Govea to be a “very good driver” and because Alewine testified that “traffic was light” on I-20 that morning. But not only was the jury free to disbelieve this portion of Alewine’s testimony, it had the

demonstrative exhibit of Alewine’s dashboard camera video from which the jury could have easily found that the traffic was significant enough to cause danger to a great number of drivers of the other vehicles on the different roads Govea raced along. See *Davis v. State*, 177 S.W.3d 355, 359 (Tex. App.—Houston [1st Dist.] 2005, no pet.) (“The jury is free to believe or disbelieve all or any part of the State’s witnesses’ testimony.”). Govea also argues that other drivers around him did not have to “take evasive action to avoid a head-on collision with him.” But many drivers around him did indeed have to take evasive action in order to prevent colliding with Govea, who was traveling at speeds in excess of 100 miles per hour. They also had to evade Alewine as he pursued Govea, and they had to avoid each other due to Govea’s aggressive and reckless driving.

Viewing the evidence in the light most favorable to the jury’s finding, we hold that a rational trier of fact could have found beyond a reasonable doubt that the manner in which Govea drove his car while evading arrest placed others in actual danger of death or serious bodily injury. See *Drichas*, 175 S.W.3d at 798. We overrule Govea’s two points.

IV. CONCLUSION

Having overruled Govea’s two points on appeal, we affirm the trial court’s judgment.

/s/ Bill Meier
BILL MEIER
JUSTICE

PANEL: MEIER and SUDDERTH, JJ.; and KERRY FITZGERALD (Senior Justice, Retired, Sitting by Assignment).

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

DELIVERED: August 10, 2017