



NUMBER 13-16-00405-CR

COURT OF APPEALS

THIRTEENTH DISTRICT OF TEXAS

CORPUS CHRISTI – EDINBURG

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MICHAEL JONES,

Appellant,

v.

THE STATE OF TEXAS,

Appellee.

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On appeal from the 403rd District Court  
of Travis County, Texas.

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## MEMORANDUM OPINION

**Before Chief Justice Valdez and Justices Longoria and Hinojosa  
Memorandum Opinion by Chief Justice Valdez**

Appellant Michael Jones was convicted of aggravated robbery. See TEX. PENAL CODE ANN. § 29.03 (West, West through Ch. 49, 2017 R.S.). By one issue, Jones

contends the evidence was legally insufficient to prove that a deadly weapon was used or exhibited during the course of the aggravated robbery. We affirm.<sup>1</sup>

## I. BACKGROUND

In Austin, Texas, on September 13, 2014, Maria Aguilar and her boyfriend, Eliseo Lara-Cervantes, went into Austin Motor Sports. While the two examined go-cart motors in the store, Aguilar's mother, Rosa Ornelas, remained in the backseat of Lara-Cervantes's truck with Aguilar's infant granddaughter. Ornelas testified that while she was playing with her great-granddaughter, Jones entered through the front driver's side door and reached for Aguilar's purse that Aguilar had left on the front passenger seat.

Ornelas, surprising Jones, grabbed the purse from Jones and placed it next to her. She heard a click as Jones pulled out a pocketknife. Jones, about three feet away from Ornelas, made movements with the knife that put Ornelas in fear that Jones was "going to poke [her] with it." Scared for her great-granddaughter, Ornelas sat back and hugged the girl. Jones grabbed Aguilar's phone and wallet that she had left on the front passenger seat and fled.

Ten days later, Jones was arrested on another unrelated robbery. The arresting officers recovered a pocketknife in Jones's front right pocket. On September 25, 2014, Ornelas identified Jones as the person who absconded with Aguilar's phone and wallet. Jones waived his right to a trial by jury and, after a bench trial, the trial court found him guilty of aggravated robbery. Jones was sentenced to twenty-five years in prison. This appeal followed.

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<sup>1</sup> This case is before the Court on transfer from the Third Court of Appeals pursuant to a docket equalization order issued by the Supreme Court of Texas. See TEX. GOV'T CODE ANN. § 73.001 (West, Westlaw through Ch. 49, 2017 R.S.).

## II. DISCUSSION

By his first issue, Jones contends that the evidence was legally insufficient to prove aggravated robbery because the evidence does not support the trial court's finding that the pocket knife was a deadly weapon.

### A. Standard of Review

To assess the legal sufficiency of the evidence to support a conviction, “the relevant question is whether, after viewing the evidence in the light most favorable to the prosecution, *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 (1979) (emphasis in original); see *Clayton v. State*, 235 S.W.3d 772, 778 (Tex. Crim. App. 2007). The appellate court is tasked with “determin[ing] whether the necessary inferences are reasonable based upon the combined and cumulative force of all the evidence when viewed in light most favorable to the verdict.” *Hooper v. State*, 214 S.W.3d 9, 16–17 (Tex. Crim. App. 2007). Both direct and circumstantial evidence are treated equally, and evidence to be reviewed includes evidence that was improperly admitted as well. *Clayton*, 235 S.W.3d 772 at 778; see also *Conner v. State*, 67 S.W. 192, 197 (Tex. Crim. App. 2001); *Allen v. State*, 249 S.W. 3d 680, 688-689 (Tex. App.—Austin 2008, no pet.). “[T]he reviewing court [is] to look only at the evidence supporting the verdict and to presume that any conflicts were resolved in favor of the prosecution.” *Sanders v. State*, 199 S.W.3d 818, 822 (Tex. Crim. App. 2003); see *Jackson*, 443 U.S. at 326.

### B. Applicable Law

If, in the course of a robbery, a person “uses or exhibits a deadly weapon,” that robbery becomes an aggravated robbery. TEX. PENAL CODE ANN. § 29.03(a)(2) (West,

Westlaw through Ch. 49, 2017 R.S.). The Penal Code defines a “deadly weapon” as “(A) a firearm or anything manifestly designed, made, or adapted for the purpose of inflicting death or serious bodily injury; or (B) anything that in the manner of its use or intended use is capable of causing death or serious bodily injury.” *Id.* § 1.07(a)(17). The State need not prove that the actor intended to cause death or serious bodily injury, only that the actor intended a use of the object in which it would be capable of causing death or serious bodily injury. *See McCain v. State*, 22 S.W.3d 497, 503 (Tex. Crim. App. 2000). “The placement of the word ‘capable’ in the provision enables the statute to cover conduct that threatens deadly force, even if the actor has no intention of actually using deadly force.” *Id.* The intent described in *McCain* can be inferred, not just where the actor uses the object in question to inflict injury, but where the actor uses the object in a threatening manner. *See id.* (observing “objects used to threaten deadly force are in fact deadly weapons”); *see also Bailey v. State*, 46 S.W.3d 487, 491 (Tex. App.—Corpus Christi 2001, pet. ref’d) (concluding that “a rational fact finder could find that appellant intended to hit [the victim] with the boards in such a manner that they would be capable of causing serious bodily injury or death.”).

“A knife is not a deadly weapon per se.” *Williams v. State*, 575 S.W.2d 30, 32 (Tex. Crim. App. 1979) (citing to *Limuel v. State*, 568 S.W.2d 309 (Tex. Crim. App. 1978); *Windham v. State*, 530 S.W.2d 111 (Tex. Crim. App. 1975)). Expert testimony is not required to establish a knife as a deadly weapon, nor does the State have to introduce the knife into evidence to prove that it was a deadly weapon. *See Davidson v. State*, 602 S.W.2d 272, 273 (Tex. Crim. App. 1980); *see also Magana v. State*, 230 S.W.3d 411, 414 (Tex. App.—San Antonio 2007, pet. ref’d). Just the partial visibility of a deadly weapon

on a defendant during an aggravated robbery, even if not pointed at a victim, satisfies the element of use or exhibition required to convict a defendant of aggravated robbery. *McCain*, 22 S.W.3d at 503. A “factfinder could rationally conclude that [a weapon] . . . exhibited during [a] criminal transaction, or at least, . . . its presence was used by appellant to instill in the complainant apprehension, reducing the likelihood of resistance during the encounter.” *Id.* Further, when gestures by a witness, such as “like this” or “like that” appear in the record without further explanation, appellate courts may presume that the undescribed act supports the jury’s findings. See *Gaona v. State*, 733 S.W.2d 611, 613 n.1 (Tex. App.—Corpus Christi 1987, pet. ref’d); see also *Holland v. State*, No. 13-15-00085-CR, 2016 WL 3626094, at \*4 (Tex. App.—Corpus Christi 2016, no pet.) (mem. op., not designated for publication) (concluding that a rational trier of fact could have determined from the evidence that fishing knife was used as a deadly weapon when, among other things, the complainant stated that the knife was “maybe that long” while demonstrating its length to the jury).

In determining whether a weapon is deadly the court “consider[s] words and other threatening actions by the defendant, including the defendant’s proximity to the victim; the weapon’s ability to inflict serious bodily injury or death, including the size, shape, and sharpness of the weapon; and the manner in which the defendant used the weapon.” *Johnson v. State*, 509 S.W.3d 320, 323 (Tex. Crim. App. 2017). Wounds are also considered, but a knife can be a deadly weapon without inflicting any wounds. *Davidson*, 602 S.W.2d at 273. Out of all the factors, however, the most important is “the manner in which the weapon was used.” *Dominique v. State*, 598 S.W.2d 285, 286 (Tex. Crim. App.

1980). When a weapon is used to facilitate the underlying crime, it is a deadly weapon. See *McCain*, 22 S.W.3d at 503.

### **C. Analysis**

In view of the foregoing authority, the issue is whether the pocketknife Jones utilized during the robbery satisfies the elements of a deadly weapon necessary to constitute an aggravated robbery.

It remains unclear whether the pocketknife recovered on Jones the day he was arrested was the knife used in the September 13th robbery. Ornelas, who was uninjured in the robbery, was unable to confirm whether the knife recovered on Jones that was put into evidence was the same knife exhibited by Jones during the robbery. Additionally, there was no expert testimony to determine how life-threateningly capable the pocketknife was. However, neither of these circumstances is required to establish the pocketknife as a deadly weapon. See *Davidson*, 602 S.W.2d at 273; see also *Magana*, 230 S.W.3d at 414. To establish the knife in question as a deadly weapon, we must decide, viewing the evidence in the light most favorable to the prosecution, whether any rational trier of fact could have found the evidence concerning Jones's actions—his proximity to Ornelas, the pocketknife's ability to inflict serious bodily injury or death, and the manner in which Jones utilized the weapon—sufficient to prove the deadly weapon element of aggravated robbery beyond a reasonable doubt. See *Jackson*, 443 U.S. at 319; see also *Clayton*, 235 S.W.3d at 778; *Johnson*, 509 S.W.3d at 323.

As to the shape of the knife's capabilities and its proximity to the victim, during trial, Officer Nguyen testified that Ornelas told him Jones pulled out a six-inch knife and pointed it toward her face from approximately three feet away. Though she could not see the

handle of the pocketknife, Ornelas had a full view of the blade and immediately “went back” and hugged her great-granddaughter. Using gestures, she testified as to the length of the blade. She said she feared Jones would “poke” her with the knife, so she allowed him to take the phone and wallet.

The manner in which Jones used the knife is the most important factor here. See *Dominque* 598 S.W.2d at 286. Ornelas had a view of the blade in Jones’s hand, and Jones pointed the blade in the direction of her face. That alone satisfies the use required to convict Jones of aggravated robbery. See *McCain*, 22 S.W.3d at 503. Having brought out the pocketknife when Ornelas began to struggle with Jones over the purse, a factfinder could reasonably find that Jones used the pocketknife to instill apprehension in Ornelas and reduce her resistance to the robbery. See *id.* Opening the knife near Ornelas and toward her face, Jones used the knife in a threatening manner capable of causing serious bodily injury or death to facilitate the robbery. See *id.* Therefore, after viewing the evidence in the light most favorable to the prosecution, we conclude that a rational trier of fact could have found beyond a reasonable doubt that Jones intended the knife to be used in the robbery as a deadly weapon. See *Johnson*, 509 S.W.3d at 342 (holding that the evidence supported the jury's finding that a butter knife with an approximate two-inch blade used in the robbery of convenience store was a deadly weapon where the defendant brandished the butter knife at the cashiers while making threat from approximately two feet away). We overrule Jones’s sole issue.

### **III. CONCLUSION**

We affirm the trial court’s judgment.

**/s/ Rogelio Valdez**  
ROGELIO VALDEZ  
Chief Justice

Do not publish.  
TEX. R. APP. P. 47.2(b).

Delivered and filed this  
20th day of July, 2017.