

Opinion issued December 16, 2010



In The  
**Court of Appeals**  
For The  
**First District of Texas**

---

NO. 01-09-00608-CR

---

**WILLIAM TAVARES DUNN, Appellant**  
**V.**  
**THE STATE OF TEXAS, Appellee**

---

---

**On Appeal from the 180th District Court**  
**Harris County, Texas**  
**Trial Court Case No. 1146501**

---

---

**MEMORANDUM OPINION**

A jury convicted appellant William Tavares Dunn of aggravated robbery and assessed punishment at 20 years in prison. *See* TEX. PENAL CODE ANN. § 29.03 (Vernon 2003). On appeal, Dunn contends that the evidence is factually

insufficient to show that he used or exhibited a deadly weapon during the commission of the robbery. Viewing all of the evidence adduced at trial in the light most favorable to the verdict, we conclude that a rational trier of fact could have found that Dunn committed the essential elements of aggravated robbery. Accordingly, we affirm the trial court's judgment.

### **I. Background**

Dunn went to a department store with his infant daughter and another man. Vance Ratcliff, the department store's loss prevention officer, was monitoring the store by means of a video-surveillance system when he noticed Dunn and the other man in the ladies' department. He watched Dunn put a bottle of perfume in the pocket of his jacket and hide some clothing inside a backpack he had taken from the children's department of the store. Dunn put the backpack in his cart and walked toward the door to leave the store. Just before Dunn left, Ratcliff stopped him and identified himself as the store's loss-prevention officer. He asked Dunn to return the merchandise. Dunn refused, and Ratcliff reached into the cart to retrieve the backpack. At trial, Ratcliff testified that Dunn "used a certain word like M.F." and then pulled a knife from his pocket. Ratcliff testified that the knife had a black handle and a three-inch blade. He said that as he retreated, Dunn came toward him with the knife and slashed his shirt. Ratcliff testified, "I was scared of my life."

Dunn fled the store, and Ratcliff noted his license plate number. Many months later, the police arrested Dunn at his apartment.

At trial, the State introduced into evidence Ratcliff's shirt and the store's surveillance video. Dunn confessed to robbery but denied using a deadly weapon. He denied having or using a knife. Dunn said, "I saw the video, but I didn't see no knife." Rather, he said that he gave Ratcliff "just a quick punch."

## **II. Sufficiency of the Evidence**

In two issues, Dunn argues that the evidence is factually insufficient to support his conviction for aggravated robbery because the evidence of his use of a deadly weapon is both (1) so weak that it renders the verdict wrong and unjust and (2) greatly outweighed by the contrary evidence.

### **A. Standard of review**

Due process requires a court reviewing the sufficiency of evidence to support a criminal conviction to determine "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, 99 S. Ct. 2781, 2789 (1979). Our state-law standard for reviewing the factual sufficiency of the evidence mirrors the standard required by the United States Constitution. *See Brooks v. State*, No. PD-0210-09, 2010 WL

3894613, at \*14 (plurality op.), \*22 (Cochran, J., concurring) (Tex. Crim. App. Oct. 6, 2010).

### **B. Aggravated robbery**

A person commits robbery when he intentionally or knowingly threatens or places another person in fear of imminent bodily injury or death in the course of committing theft. *See* TEX. PENAL CODE ANN. § 29.02 (Vernon 2003). A person commits aggravated robbery when he uses or exhibits a deadly weapon in the course of committing robbery. *See* TEX. PENAL CODE ANN. § 29.03 (aggravated robbery). An object is a deadly weapon if “in the manner of its use or intended use,” the object “is capable of causing death or serious bodily injury.” TEX. PENAL CODE ANN. § 1.07(a)(17)(B) (Vernon Supp. 2009); *McCain v. State*, 22 S.W.3d 497, 503 (Tex. Crim. App. 2000). Serious bodily injury is that which “creates a substantial risk of death or that causes death, serious permanent disfigurement, or protracted loss of the function of any bodily organ,” TEX. PENAL CODE ANN. § 1.07(a)(46) (Vernon Supp. 2009), and bodily injury is “physical pain, illness, or any impairment of physical condition.” *Id.* § 1.07(a)(8) (Vernon Supp. 2009).

### **C. Use of a deadly weapon**

The statutory definition of “deadly weapon” does not require that death or serious bodily injury be inflicted or even intended by the actor. *McCain*, 22 S.W.3d at 503 (holding that objects used to threaten deadly force are deadly

weapons, even if defendant had no intention of actually using deadly force). Thus, the State must show only that the “use or intended use is *capable* of causing death or serious bodily injury.” *Tucker v. State*, 274 S.W.3d 688, 691 (Tex. Crim. App. 2008) (quoting *McCain*, 22 S.W.3d at 503). The State need not show that any wounds were actually inflicted. *See Brown v. State*, 716 S.W.2d 939, 946 (Tex. Crim. App. 1986); *Victor v. State*, 874 S.W.2d 748, 751 (Tex. App.—Houston [1st Dist.] 1994, pet. ref’d).

Not every knife is necessarily a deadly weapon, but a jury may find a knife to be a deadly weapon based on (1) its manner of use, (2) its size and shape, and (3) its capacity to be used to cause serious bodily injury or death. *See McCain*, 22 S.W.3d at 502–03; *Brown*, 716 S.W.2d at 946–47; *Morales v. State*, 633 S.W.2d 866, 868 (Tex. Crim. App. 1982); *Garcia v. State*, 17 S.W.3d 1, 4 (Tex. App.—Houston [1st Dist.] 1999, pet. ref’d). In addition, a jury may consider the victim’s proximity to the knife, *see Tisdale v. State*, 686 S.W.2d 110, 115 (Tex. Crim. App. 1984), and the defendant’s words or threats, *see Williams v. State*, 575 S.W.2d 30, 32 (Tex. Crim. App. 1979). In determining that a knife is a deadly weapon, a jury may also consider testimony from the victim that he feared for his life. *See Denham v. State*, 574 S.W.2d 129, 130–31 (Tex. Crim. App. 1978). The State does not have to introduce the knife into evidence to prove that it was a deadly weapon. *Victor*, 874 S.W.2d at 751; *see Morales*, 633 S.W.2d at 868.

#### **D. Analysis**

The State did not introduce the knife into evidence, and Ratcliff was uninjured. Accordingly the State had to introduce evidence of other factors to prove that Dunn used a deadly weapon. *See Victor*, 874 S.W.2d at 751. Dunn argues that the evidence that he used a deadly weapon is too weak to support the jury's verdict because Ratcliff's description of the knife was insufficient to describe a deadly weapon and because he did not use threatening words when speaking to Ratcliff. As noted above, we review the evidence in the light most favorable to the prosecution to determine whether any rational trier of fact could have found beyond a reasonable doubt that Dunn used a deadly weapon in the course of the robbery.

With respect to the manner of the knife's use, Ratcliff testified that Dunn attempted to slash him, and he succeeded in slashing his shirt. The evidence demonstrated that Dunn was not using the knife as a utility or pocket knife. Instead, he was using it in an aggressive fashion against Ratcliff. Dunn contends that the surveillance video showed him making a punching motion rather than a lunging or swiping motion as suggested by Ratcliff. While Dunn thereby contradicted Ratcliff's testimony about the use of the knife, the jury is the sole judge of the credibility of the witnesses and the weight to be given their testimony. *Lancon v. State*, 253 S.W.3d 699, 705 (Tex. Crim. App. 2008). The jury saw the

surveillance video and the shirt that Ratcliff wore that day, which had been slashed. Based on this evidence, a rational jury could have disbelieved Dunn when he denied using a knife.

Regarding the size and shape of the knife, Ratcliff described it as having a three-inch blade. Because the knife slashed Ratcliff's shirt, a jury could infer that it was sharp, not dull. This evidence was relevant to the knife's capacity to be used to cause serious bodily injury or death. A jury could further infer that a knife that was sharp enough to cut through a shirt was sharp enough to cut through skin and cause serious bodily injury.

Moreover, Ratcliff was near the knife and he feared for his life. Ratcliff was near Dunn when his shirt was slashed, just after he removed the stolen merchandise from Dunn's cart. He testified that he was retreating when Dunn came toward him with the knife. At first, Ratcliff thought he had been injured, and he checked to see if he was bleeding.

In the course of this episode, Dunn called Ratcliff an "M.F." While Dunn did not threaten any particular harm, these words suggest aggression toward Ratcliff and that the slashing of the shirt was not accidental. Together with the totality of the other evidence, Dunn's foul, aggressive language can weigh in favor of a finding that a knife is a deadly weapon. *See Bailey v. State*, 46 S.W.3d 487, 491–92 (Tex. App.—Corpus Christi 2001, pet. ref'd) ("No one factor is

determinative, and each case must be examined on its own facts.”). Finally, Ratcliff testified that when Dunn came toward him with the knife, he feared for his life.

In arguing that the evidence was insufficient to prove that the knife was a deadly weapon, Dunn relies on *In re J.A.W.*, 108 S.W.3d 573, 576 (Tex. App.—Amarillo 2003, no pet.), in which the court of appeals held that the evidence was factually insufficient to establish that the knife that the accused used during a robbery was a deadly weapon. *J.A.W.* is factually distinguishable because the victim in that case merely testified that the accused “pulled” a knife and that he was scared. *Id.* There was no evidence introduced at trial to show how the knife was used, to describe the blade, or to indicate the proximity of the victim to the accused. *Id.* Although the victim testified that the accused threatened him, he said that the accused threatened to “beat” him, not to stab him. *Id.* In contrast, the evidence in this case showed how Dunn used the knife, the size of the knife, the fact that the knife was sharp enough to cut through a shirt, that Dunn used offensive language, and that Ratcliff feared for his life.



## CONCLUSION

Considering all of the evidence adduced at trial in the light most favorable to the prosecution, we conclude that a rational trier of fact could have found the essential elements of the crime, including use of a deadly weapon, beyond a reasonable doubt. We therefore hold that the evidence was not factually insufficient to support the conviction, and we overrule both of Dunn's issues. We affirm the judgment of the trial court.

Michael Massengale  
Justice

Panel consists of Chief Justice Radack and Justices Massengale and Mirabal.\*

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

---

\* The Honorable Margaret Garner Mirabal, Senior Justice, Court of Appeals for the First District of Texas, sitting by assignment.