

Opinion issued August 11, 2020



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

---

NO. 01-19-00945-CR

---

**JASON B. BROOKS, Appellant**  
V.  
**THE STATE OF TEXAS, Appellee**

---

---

**On Appeal from the 182nd District Court  
Harris County, Texas  
Trial Court Case No. 1628272**

---

---

**MEMORANDUM OPINION**

Jason Brooks was charged with first-degree felony aggravated assault of a public servant, TEX. PENAL CODE § 22.02(a)(1), (b)(2)(B), enhanced by two prior felony convictions, *id.* § 12.42(d). Brooks entered a plea of guilty without an agreed recommendation as to punishment. The trial court accepted Brooks's plea and

entered a judgment of conviction, which sentenced Brooks to 40 years' confinement and affirmatively found that Brooks used or exhibited a deadly weapon during the commission of the offense.

In a single issue, Brooks argues that the trial court erred in making the deadly-weapon finding—and that the judgment should be reformed to remove it—because the State failed to provide sufficient notice of its intent to seek the finding. We hold that the State provided sufficient notice of its intent to seek a deadly-weapon finding by alleging in the indictment that Brooks “cause[d] serious bodily injury to [the complainant] by stabbing [him] with a knife.”

Therefore, we affirm.

### **Background**

This case arises from an assault on a metro bus operator. On March 21, 2018, the complainant was working the morning shift, when Brooks boarded the bus, appearing “disgruntled.” When the bus reached its last stop, Brooks approached the complainant from the rear and stabbed him multiple times in the neck and face with a knife. The complainant suffered permanent damage to his vision and speech and developed post-traumatic stress disorder, depression, and anxiety.

On June 11, 2018, Brooks was indicted in cause number 158442 on a charge of second-degree felony aggravated assault. The indictment alleged that Brooks

“cause[d] bodily injury to [the complainant] by stabbing him with a deadly weapon” and that Brooks “used and exhibited a deadly weapon, namely a Knife.”

A little over ten months later, on April 16, 2019, the original charge was dismissed, and Brooks was re-indicted in cause number 1628272 on a charge of first-degree felony aggravated assault of a public servant. The new indictment alleged that Brooks “cause[d] serious bodily injury to . . . the Complainant, while the Complainant was lawfully discharging an official duty[,] by stabbing the Complainant with a knife, knowing the Complainant was a public servant.” Unlike the original indictment, the new indictment did not specifically allege that Brooks “used and exhibited a deadly weapon.”

On July 10, 2019, Brooks waived his right to a jury trial and pleaded guilty to the charged offense without an agreed recommendation as to punishment. The trial court accepted Brooks’s plea and conducted a presentence investigation hearing.

After the hearing, the trial court entered a judgment of conviction sentencing Brooks to 40 years’ confinement. In the judgment, the trial court affirmatively found that Brooks used or exhibited a deadly weapon during the commission of the offense (and thereby extended the date by which Brooks would be eligible for release on parole).

Brooks appeals.

## Adequate Notice

In a single issue, Brooks contends that the indictment under which he was prosecuted did not provide adequate notice of the State's intent to seek an affirmative finding that Brooks used or exhibited a deadly weapon during the commission of the offense.

When the State seeks an affirmative finding that a defendant used a deadly weapon during the commission of an offense, due process requires that the State provide the defendant with written notice of its intent to seek such a finding. *See Villescás v. State*, 189 S.W.3d 290, 293 (Tex. Crim. App. 2006) (notice requirement is “firmly rooted in fundamental precepts of due process and due course of law” (quoting *Ex parte Patterson*, 740 S.W.2d 766, 774 n.7 (Tex. Crim. App. 1987), *overruled on other grounds by Ex parte Beck*, 769 S.W.2d 525 (Tex. Crim. App. 1989))); *Brooks v. State*, 847 S.W.2d 247, 248 (Tex. Crim. App. 1993) (per curiam) (“A defendant is entitled to notice that the State will seek an affirmative finding that a deadly weapon was used during the commission of the charged crime.”); *Beck*, 769 S.W.2d at 526 (“[A]ccused persons are entitled to notice in some form that the use of a deadly weapon will be a fact issue at the time of prosecution, if the State intends to pursue the entry of a deadly weapon finding . . . .”). Such notice may be provided in the indictment.

To provide adequate notice, the indictment need not specifically allege that the defendant used a deadly weapon during the commission of the offense. *See Beck*, 769 S.W.2d at 526–27. Instead, it is enough that the indictment contains allegations from which a deadly-weapon allegation may be reasonably inferred, *see id.* at 526, such as an allegation that the defendant committed the offense with an instrument that satisfies the Penal Code’s definition of a “deadly weapon,” *see, e.g., id.* (indictment alleging defendant caused complainant’s death “by shooting him with ‘a gun’”); *Gilbert v. State*, 769 S.W.2d 535, 536–37 (Tex. Crim. App. 1989) (indictment alleging defendant “caused serious bodily injury to [the complainant] by placing the said complainant into hot liquid”); *Diaz v. State*, 994 S.W.2d 374, 380 (Tex. App.—Waco 1999, pet. ref’d) (indictment alleging defendant “cause[d] serious bodily injury to [the complainant] by striking [him] with a pool cue”); *Praker v. State*, No. 01-06-00330-CR, 2007 WL 1166381, at \*2 (Tex. App.—Houston [1st Dist.] Apr. 19, 2007, no pet.) (mem. op., not designated for publication) (indictment alleging defendant “[set] an occupied building on fire and did thereby cause the [complainant’s] death”); *Duron v. State*, No. 01-00-01175-CR, 2001 WL 1382272, at \*1 (Tex. App.—Houston [1st Dist.] Nov. 8, 2001, pet. ref’d) (not designated for publication) (indictment alleging defendant “cause[d] serious bodily injury to . . . the Complainant . . . by firing a gun in the direction of the Complainant”); *see also Blount v. State*, 257 S.W.3d 712, 713–15 (Tex. Crim. App. 2008) (holding that

indictment alleging defendant committed or attempted to commit aggravated assault in course of committing burglary gave adequate notice of State's intent to seek deadly-weapon finding since aggravated assault can only be committed in two ways, each of which involves use of deadly weapon).

Here, the indictment under which Brooks was prosecuted alleged that Brooks "cause[d] serious bodily injury to [the complainant] by stabbing [him] with a knife." A knife satisfies the Penal Code's definition of a "deadly weapon." *See* PENAL § 1.07(a)(17)(B) (defining "deadly weapon" to include "anything that in the manner of its use or intended use is capable of causing death or serious bodily injury"). Therefore, the indictment contains allegations from which a deadly-weapon allegation may be reasonably inferred; indeed, necessarily follows. *See Beck*, 769 S.W.2d at 526.

Brooks nevertheless contends that the indictment did not provide adequate notice of the State's intent to seek an affirmative deadly-weapon finding. The original indictment specifically alleged that Brooks "used and exhibited a deadly weapon." But the subsequent indictment under which Brooks was prosecuted did not. Because of this discrepancy, Brooks argues that it was reasonable for him to believe the State did not intend on seeking an affirmative deadly-weapon finding. We disagree.

The specific allegation contained in the original indictment—filed under a separate cause number that was dismissed—does not change the fact that a deadly-weapon allegation *necessarily follows* from the allegations contained in the subsequent indictment. The subsequent indictment alleged that Brooks committed the offense “by stabbing the Complainant with a knife.” A knife is a deadly weapon. Brooks therefore had notice that the State would seek a finding that he used a deadly weapon in the commission of the offense. It was not reasonable for Brooks to believe otherwise.

We hold that Brooks was provided adequate notice of the State’s intent to seek an affirmative finding that he used a deadly weapon during the commission of the offense. Accordingly, we overrule Brooks’s sole issue.

### **Conclusion**

We affirm.

Gordon Goodman  
Justice

Panel consists of Justices Kelly, Goodman, and Hightower.

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