

Affirmed and Memorandum Opinion filed January 5, 2009.



In The

Fourteenth Court of Appeals

NO. 14-08-01021-CR

OTONIEL RANGEL, Appellant

V.

THE STATE OF TEXAS, Appellee

**On Appeal from the 209th District Court
Harris County, Texas
Trial Court Cause No. 1140620**

MEMORANDUM OPINION

Appellant, Otoniel Rangel, appeals his conviction for assault on a family member, claiming in a single issue that the evidence is legally insufficient to support the jury's verdict. We affirm.

BACKGROUND

This case arises from an altercation between appellant and his estranged wife, the complainant. On the morning of November 7, 2007, appellant arrived at the complainant's trailer house uninvited. Appellant tried to open the front door to enter the house, but it was locked. As appellant was attempting to open the front door, his and the

complainant's younger son, P.R., heard the doorknob moving and observed appellant through the peephole trying to open the door. P.R. hurriedly found the complainant and told her that appellant was at the front door. The complainant then went to the front door, looked through the peephole, and observed appellant trying to force the locked front door open. Despite the complainant's attempts to keep appellant out of the house, he was able to force the door open by breaking the door frame. Upon appellant's entering the home, he stepped into the living room, and the complainant asked appellant to leave. He refused. The two had a brief argument, which escalated when appellant threatened to kill the complainant.

The complainant told P.R. to get his older brother, E.R., who was sleeping in another room in the home. P.R. complied, and as E.R. entered the living room, appellant locked the front door and said "just . . . call the cops because [I am] going to kill her." Appellant said again "I'm going to kill your mother," then pulled a knife from his back pocket and stepped towards the complainant. Frightened, the complainant stepped back, and P.R. stepped in front of the complainant. E.R. then stepped in front of appellant and grabbed his wrist. E.R. was able to force the knife from appellant's grip, causing the knife to fall to the floor. Appellant then retrieved the knife and placed it back in his pocket. Appellant kissed the complainant, hugged his two sons, and then left the home.

Appellant was later charged with second-degree felony aggravated assault against a family member. After a jury trial, appellant was found guilty as charged in the indictment and sentenced to 16 years in prison. On appeal, appellant contends that the evidence is legally insufficient to support the jury's finding that he exhibited a deadly weapon.

STANDARD OF REVIEW

In a legal sufficiency review, we view all the evidence in the light most favorable to the verdict and determine whether a rational jury could have found the defendant guilty of all the elements of the offense beyond a reasonable doubt. *Jackson v. Virginia*, 443

U.S. 307, 319 (1979); *Williams v. State*, 270 S.W.3d 140, 142 (Tex. Crim. App. 2008). The jury is the exclusive judge of the credibility of witnesses and of the weight to be given to their testimony. *Lancon v. State*, 253 S.W.3d 699, 707 (Tex. Crim. App. 2008). Reconciliation of conflicts in the evidence is within the exclusive province of the jury. *Cleburn v. State*, 138 S.W.3d 542, 544 (Tex. App.—Houston [14th Dist.] 2004, pet. ref'd). We must resolve any inconsistencies in the testimony in favor of the verdict. *Curry v. State*, 30 S.W.3d 394, 406 (Tex. Crim. App. 2000).

ANALYSIS

A person commits the offense of assault if he: (1) intentionally, knowingly, or recklessly causes bodily injury to another; (2) intentionally or knowingly threatens another with imminent bodily injury; or (3) intentionally or knowingly causes physical contact with another when he knows or reasonably should believe that the other will regard the contact as offensive or provocative. Tex. Penal Code § 22.01(a). Assault, generally a misdemeanor offense, is enhanced to the felony offense of aggravated assault when either a serious bodily injury is inflicted, or when a deadly weapon is used or exhibited during the assault. *See id.* §§ 22.01(b), 22.02(a)-(b). Appellant disputes neither that he threatened the complainant with bodily injury nor that the threat was made intentionally or knowingly. Rather, appellant's sufficiency argument challenges the deadly-weapon evidence aggravating the assault charge. Appellant claims that the evidence is legally insufficient on the deadly weapon finding because there is no evidence as to the distance between him and the complainant at the time of the assault and there is no evidence as to the size of the knife. Appellant further contends that the evidence does not support a deadly weapon finding because the complainant suffered no physical injury.

A "deadly weapon" is (1) a firearm or anything manifestly designed, made, or adapted for the purpose of inflicting death or serious bodily injury; or (2) 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). When, as here, there is no actual physical injury alleged to have been caused by the knife, the State is required to show the knife's capacity to cause death or serious bodily injury by either showing the manner of its use, the size of the blade, threats made by the accused, or the physical proximity between the accused and the victim. *Soto v. State*, 864 S.W.2d 687, 691 (Tex. App.—Houston [14th Dist.] 1993, pet. ref'd). Furthermore, evidence of the size of the blade, the blade's sharpness, the use of any brandishing motions, or the victim's fear of serious bodily injury or death may prove a knife's capacity to cause death or serious bodily injury. *Tisdale v. State*, 686 S.W.2d 110, 111 (Tex. Crim. App. 1984); *Blain v. State*, 647 S.W.2d 293, 294 (Tex. Crim. App. 1983).

Although appellant is correct that the written record is unclear as to the precise size of the knife, at trial before the jury, the complainant demonstrated the size of the knife with hand gestures. Likewise, the written record is unclear as to the exact distance between appellant and the complainant, but P.R. physically demonstrated to the jury the proximate distance between appellant and the complainant during the incident. We view this demonstrative evidence in the light most favorable to the jury's verdict. *See Williams*, 270 S.W.3d at 142. Furthermore, the record contains other evidence sufficient to prove that appellant used the knife as a deadly weapon. Specifically, the record reflects that appellant arrived at the complainant's house uninvited. When the complainant refused to allow appellant into the house, he forced the locked front door open by breaking the door frame. The complainant testified that appellant appeared angry when he broke into the house. The complainant then repeatedly asked appellant to leave, but he refused and began an argument with the complainant. Appellant then threatened to kill the complainant and told his sons to call the police.

As appellant made his death threats, he started to reach for a knife in his back pocket, but before doing so, he closed the door behind him and locked it. Appellant then pulled the knife from his pocket, held the knife in the air at eye level with the blade

facing the complainant, and stepped towards her. As appellant brandished the knife, he threatened to the kill the complainant. The complainant testified that appellant was looking directly at her when he made the death threat. Moreover, the complainant and her two sons all testified that they feared for the complainant's life and believed that appellant was going to kill the complainant. Viewing the evidence in the light most favorable to the verdict, we hold the evidence is legally sufficient to support the jury's finding that the knife was used as a deadly weapon. We overrule appellant's sole issue and affirm the trial court's judgment.

/s/ Adele Hedges
Chief Justice

Panel consists of Chief Justice Hedges and Justices Seymore and Sullivan.

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