Fourth Court of Appeals
San Antonio, Texas

MEMORANDUM OPINION

No. 04-21-00562-CR

Yuri **MEDINA**,
Appellant

v.

The **STATE** of Texas,
Appellee

From the 379th Judicial District Court, Bexar County, Texas
Trial Court No. 2019CR1596
Honorable Ron Rangel, Judge Presiding

Opinion by: Liza A. Rodriguez, Justice

Sitting: Liza A. Rodriguez, Justice
Lori I. Valenzuela, Justice
Sandee Bryan Marion, Chief Justice (Ret.)[1]

Delivered and Filed: July 12, 2023

AFFIRMED

After a jury trial, Yuri Medina was found guilty of committing aggravated assault with a deadly weapon and was sentenced to three years of confinement. In accordance with the jury's verdict, her sentence was then suspended, and she was placed on community supervision for three years. In one issue, she argues on appeal that the evidence is insufficient to support the deadly weapon finding. We affirm.

[1]Sitting by assignment pursuant to section 74.003(b) of the Texas Government Code

DISCUSSION

At trial, there was testimony that on December 2, 2018, ten-year-old R.M.[2] and his family attended a crowded mixed martial arts ("MMA") event at a venue in San Antonio, Texas. R.M. was sitting on the first floor underneath a second-floor balcony when the crowd became upset at the outcome of the last fight of the night. Members of the crowd began throwing beer bottles and hitting one another. R.M. was hit on the head by a wooden stool that was thrown over the second-floor balcony, causing his head to bleed profusely. He was taken to the hospital where he received eight staples to treat the eight- to ten-inch laceration to his head.

Medina was a participant in the MMA event. Earlier in the evening, she had lost her fight to another competitor. At the time the crowd erupted in violence, she was on the second floor of the venue. She was identified by witnesses as the person who threw the stool over the balcony that injured R.M. A deputy sheriff, who was working the event as security, arrested the woman (Medina) pointed out by the witnesses. Medina was charged with and convicted of aggravated assault with a deadly weapon. The indictment described the deadly weapon as "a stool, that in the manner of its use and intended use was capable of causing death and serious bodily injury." On appeal, Medina argues the evidence is insufficient to show that the stool was used as a deadly weapon.

In reviewing the sufficiency of the evidence, we consider all the evidence in the light most favorable to the verdict and determine whether a rational trier of fact could have found the essential elements of the offense beyond a reasonable doubt. *Jackson v. Virginia*, 443 U.S. 307, 319 (1979); *Zuniga v. State*, 551 S.W.3d 729, 732 (Tex. Crim. App. 2018). Under this standard, we defer "to the responsibility of the trier of fact fairly to resolve conflicts in the testimony, to weigh the

[2]To protect the identity of the minor child, we refer to him by initials.

evidence, and to draw reasonable inferences from basic facts to ultimate facts." *Jackson*, 443 U.S. at 319. "We may not re-weigh the evidence or substitute our judgment for that of the factfinder." *Zuniga*, 551 S.W.3d at 732. "Although juries may not speculate about the meaning of facts or evidence, juries are permitted to draw any reasonable inferences from the facts so long as each inference is supported by the evidence presented at trial." *Id*. "We presume that the factfinder resolved any conflicting inferences from the evidence in favor of the verdict, and we defer to that resolution." *Id*. "This is because the jurors are the exclusive judges of the facts, the credibility of the witnesses, and the weight to be given to the testimony." *Id*. "Direct evidence and circumstantial evidence are equally probative, and circumstantial evidence alone may be sufficient to uphold a conviction so long as the cumulative force of all the incriminating circumstances is sufficient to support the conviction." *Id*.

"We measure whether the evidence presented at trial was sufficient to support a conviction by comparing it to 'the elements of the offense as defined by the hypothetically correct jury charge for the case.'" *Id*. (quoting *Malik v. State*, 953 S.W.2d 234, 240 (Tex. Crim. App. 1997)). "The hypothetically correct jury charge is one that 'accurately sets out the law, is authorized by the indictment, does not unnecessarily increase the State's burden of proof or unnecessarily restrict the State's theories of liability, and adequately describes the particular offense for which the defendant was tried.'" *Id*. (quoting *Malik*, 953 S.W.2d at 240).

Medina was charged with aggravated assault with a deadly weapon pursuant to section 22.02(a)(2) of the Texas Penal Code. Under section 22.02(a)(2), a person commits an offense if she commits assault as defined by section 22.01 and the person "uses or exhibits a deadly weapon during the commission of the assault." TEX. PENAL CODE § 22.02(a)(2). A person commits an assault as defined by section 22.01 if she intentionally, knowingly, or recklessly causes bodily injury to another. *Id*. § 22.01(a)(1).

Medina argues on appeal that the evidence at trial did not show that her "use or intended use of the stool was capable of causing death or serious bodily injury." Deadly weapon is defined as "anything that in the manner of its use or intended use is capable of causing death or serious bodily injury." TEX. PENAL CODE § 1.07(a)(17)(B). "Serious bodily injury" means "bodily injury that creates a substantial risk of death or that causes death, serious permanent disfigurement, or protracted loss or impairment of the function of any bodily member or organ." *Id.* § 1.07(a)(46). According to Medina, "[t]hat the stool's use was not capable of causing death seems to be proven by the fact that the child [R.M.] was treated in the Emergency Room of a hospital and release[d] and did not require being admitted into the hospital." Medina argues that while the evidence "showed that the child suffered bodily injury, it did not show serious bodily injury."

In response, the State points out that for the evidence to support Medina's conviction of aggravated assault with a deadly weapon, the evidence did not need to show that R.M., in fact, suffered serious bodily injury. The evidence need only show that the object in question was in the manner of its use *capable of* causing serious bodily injury. We agree with the State. Medina was charged with aggravated assault pursuant to section 22.02(a)(2). Under that section, the evidence need only show that (1) R.M. suffered bodily injury, which it did with evidence about R.M.'s head injuries, and (2) the manner of the stool's use was *capable of* causing death or serious bodily injury. *See* TEX. PENAL CODE §§ 1.07(a)(17)(B); 22.02(a)(2). "The placement of the word 'capable' is crucial to understanding this method of determining deadly weapon status." *Tucker v. State*, 274 S.W.3d 688, 691 (Tex. Crim. App. 2008.). It "enables the statute to cover conduct that threatens deadly force, even if the actor has no intention of actually using deadly force. *McCain v. State*, 22 S.W.3d 497, 503 (Tex. Crim. App. 2000). Accordingly, the State does not need to show that the use or intended use caused death or bodily injury but only that "the 'use or intended use is capable

of causing death or serious bodily injury.'" *Tucker*, 274 S.W.3d at 691 (quoting *McCain*, 22 S.W.3d at 503).

"A deadly weapon can be anything that in the manner of its use is capable of causing death or serious bodily injury." *Bui v. State*, 964 S.W.2d 335, 342 (Tex. App.—Texarkana 1998, pet. ref'd). A stool is not a deadly weapon per se, but can become one if, in the manner of its use, it is capable of causing death or serious bodily injury. *See id*. "It is not necessary to show that the [stool] actually did cause serious bodily injury." *Id*. Nor was it necessary to show that Medina intended to use the stool in such a manner if it was shown that Medina *did* use the stool in a manner that could cause serious bodily injury or death. *See id*. at 343 (explaining that the evidence did not need to show the appellant intended to use a Duraflame log in a manner to cause death or serious bodily injury, if the evidence showed that he did use the log in a manner that could cause death or serious bodily injury). "The following objects have been found to be deadly weapons by the manner of their use: a club, a board, a knife, a hammer, a pipe, a fist, fire, a hand, a foot, a Coke bottle, a leg of a bar stool, and an ax handle." *Id*. (citing *Hayes v. State*, 728 S.W.2d 804, 808 (Tex. Crim. App. 1987); *Blain v. State*, 647 S.W.2d 293, 294 (Tex. Crim. App. 1983); *In re K.W.G.*, 953 S.W.2d 483, 485 (Tex. App.—Texarkana 1997, pet. denied); *Powell v. State*, 939 S.W.2d 713, 718-19 (Tex. App.—El Paso 1997, no pet.); *Brooks v. State*, 900 S.W.2d 468, 472 (Tex. App.—Texarkana 1995, no pet.); *McElhaney v. State*, 899 S.W.2d 15, 17 (Tex. App.—Tyler 1995, pet. ref'd); *Jackson v. State*, 865 S.W.2d 259, 260-61 (Tex. App.—Eastland 1993, no pet.); *Taylor v. State*, 859 S.W.2d 466, 467 (Tex. App.—Dallas 1993, no pet.); *Bethel v. State*, 842 S.W.2d 804, 807 (Tex. App.—Houston [1st Dist.] 1992, no pet.); *Enriquez v. State*, 826 S.W.2d 191, 193 (Tex. App.—El Paso 1992, no pet.); *Kirkpatrick v. State*, 747 S.W.2d 521, 524 (Tex. App.—Fort Worth 1988, pet. ref'd); *Granger v. State*, 722 S.W.2d 175, 176 (Tex. App.—Beaumont 1986, pet. ref'd); *Lewis v. State*, 638 S.W.2d 148, 151 (Tex. App.—El Paso 1982, pet. ref'd)).

"The jury may consider all the facts in determining whether a weapon is deadly, including the words of the accused, the intended use of the weapon, the size and shape of the weapon, the testimony of the victim that she feared for her life, the severity of wounds inflicted, and testimony as to the weapon's potential for deadliness." *Id*. Further, expert testimony is not required in order for the jury to find a deadly weapon was used. *See Denham v. State*, 574 S.W.2d 129, 131 (Tex. Crim. App. 1978); *Bui*, 964 S.W.2d at 345; *Bethel v. State*, 842 S.W.2d 804, 807 (Tex. App.—Houston [1st Dist.] 1992, no pet.). "[T]he injuries suffered by the victim can by themselves be a sufficient basis for inferring that a deadly weapon was used." *Tucker*, 274 S.W.3d at 691-92.

Here, there was evidence from several witnesses from which the jury could reasonably conclude that Medina threw a wooden stool during a brawl over a second-floor balcony railing to the first floor below and that in doing so, she injured R.M. Witness Sean Robertson testified that the venue in question was a two-story venue and that the cage where the MMA fighters held their matches was in the middle on the first floor. There was seating for the audience upstairs and downstairs. Robertson was in an area upstairs that "the coaches and fighters [used] to warm up." According to Robertson, "after the last fight of the night, the incident where the guy had lost and a – an argument [began] between a group of people upstairs and a group of people below, and a chair [was] thrown over the edge, over the top." Robertson testified, "I'm assuming it was a group of people [who] were with the guy [who] lost because they were pretty fired up about that, and that argument started and somebody picked up a chair and threw it." Robertson clarified that "[i]t was a bar stool." Robertson saw the woman who threw the stool and pointed her out to police officers. Robertson testified the officers "grabbed her, apprehended her, and then another officer grabbed me to get my statement."

> Q: And was the same person you saw throw the stool, is that the same person that the officers took back [to a small room by the entrance]?

A: Yeah. She was giving a statement, I guess, crying to the police.

Q: Okay. And was that the same person [who] was arrested?

A: Yes.

Robertson testified that when he pointed out the woman to the officers, he was sure of his identification because he was right behind the woman when she threw the stool.

A second witness, Guillermo Romero testified that after the last fight, "the championship fight," "[c]amps started arguing with each other." Romero testified that he saw a "chair" falling from the corner of his eye and he saw the person who threw the chair pulling back her hands and realizing she hit a kid with the chair. He clarified that he did not see the chair leaving the woman's hands, but saw the woman pull back and realize what she had done. Romero reiterated that the chair was thrown from the second-floor balcony. Romero pointed out the woman who threw the chair to police officers that night, and he later saw the woman in handcuffs.

Deputy Wendell Morris testified that he was working security at the venue. When the fight broke out and the stool was thrown off the balcony injuring R.M., Morris ran upstairs to catch the perpetrator. "[A] bunch of adults" told him the perpetrator had gone downstairs and pointed out Medina as the perpetrator. Medina was attempting to leave the club through a back door but did not know the passcode to unlock the door. According to Deputy Morris, Medina denied being the one who threw the stool. Medina was arrested and statements from the witnesses who identified her were procured. Deputy Morris testified Medina was the only individual arrested for throwing the stool and injuring R.M.

There was also evidence of the physical injuries sustained by R.M. as a result of the stool landing on him. R.M.'s medical records were admitted in evidence. Also admitted in evidence were photographs showing his injuries, including the large laceration to the top of his head, abrasions and bruises on his face, and bruises on his shoulder. There was evidence that R.M.

received eight staples to his head to close the large wound. Sergeant Melanie Bowser, an investigator assigned to the case, testified that when she saw R.M. at the hospital, he had facial injuries and "eight- to ten-inch gash on the top of his head." Sergeant Bowser was "a little taken [a]back because [she] didn't realize that he looked the way he did and [that] the injuries were that severe." Sergeant Bowser testified at the venue she took a photograph of a stool similar to the one that had fallen on R.M. According to Sergeant Bowser, such a stool "can cause serious injury . . . especially if it's being thrown from a second-floor balcony."

Given the above evidence, a reasonable factfinder could have found beyond a reasonable doubt that the manner in which the stool was used (i.e., being thrown off a second-floor balcony during a brawl) was capable of causing serious bodily injury. *See Jackson v. State*, 865 S.W.2d 259, 261 (Tex. App.—Eastland 1993, no pet.) (holding that broken-off wooden bar stool leg, which caused the victim to suffer a gash in his head, was a deadly weapon). From the evidence presented at trial, the jury could have made the commonsense determination that a wooden stool thrown from a second story and hitting a person's head on the first floor could cause serious bodily injury or death. *See Eustis v. State*, 191 S.W.3d 879, 884 (Tex. App.—Houston [14th Dist.] 2006, pet. ref'd) (explaining that the factfinder is "free to apply common sense, knowledge, and experience gained in the ordinary affairs of life in drawing reasonable inferences from the evidence"). Therefore, we hold the evidence is legally sufficient to show that Medina used a deadly weapon in her assault of R.M. *See* TEX. PENAL CODE § 22.02(a)(2).

Finally, we note that in the argument section of her brief, Medina limits her argument to whether there was sufficient evidence to support the deadly weapon finding. However, to the extent that Medina intended to also argue that there was not sufficient evidence to support the finding that she was the person who threw the stool, we conclude there was sufficient evidence to support she was, in fact, that person. As noted, witnesses saw her throw the stool over the balcony

and pointed her out to police officers at the time of the incident. Those witnesses testified they saw a police officer arrest the woman who threw the stool. That officer testified at trial that (1) he arrested the woman pointed out to him by witnesses, (2) that woman was Medina, and (3) no other person was arrested for throwing the stool. From the evidence, the jury could reasonably infer that Medina was the person who threw the stool. *See Zuniga*, 551 S.W.3d at 732. Under our standard of review, we defer to the jury as "the exclusive judge[] of the facts, the credibility of the witnesses, and the weight to be given to the testimony." *Id*. Accordingly, we hold there is sufficient evidence to show that Medina was the person who used the deadly weapon in assaulting R.M.

CONCLUSION

For the reasons stated above, we affirm the judgment of the trial court.

Liza A. Rodriguez, Justice

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