

In The
Court of Appeals
Ninth District of Texas at Beaumont

NO. 09-10-00233-CR

**DASTANION DEANDRE BROWN, a/k/a DASTANION D. BROWN,
a/k/a DASTANION BROWN, Appellant**

V.

THE STATE OF TEXAS, Appellee

**On Appeal from the 252nd District Court
Jefferson County, Texas
Trial Cause No. 08-05057**

MEMORANDUM OPINION

The State charged appellant Dastanion Deandre Brown¹ by indictment, as a repeat felony offender, with aggravated robbery by use of a deadly weapon. Thereafter a jury convicted appellant of aggravated robbery. *See* Tex. Penal Code Ann. § 29.03(a)(2) (West 2003). The jury assessed a punishment of thirty-seven years in prison. *See* Tex.

¹ Brown is also known as Dastanion D. Brown and Dastanion Brown.

Penal Code Ann. § 12.32 (West Supp. 2010). Appellant argues the evidence is legally insufficient to sustain his conviction. We affirm the trial court's judgment.

BACKGROUND

Patricia Knight testified that on October 16, 2008, she met Rossie Coker, a long-time friend, in the parking lot at Central Mall. As Knight and Coker were walking into the mall that morning, Knight testified that a man approached her. At trial, she identified the man as appellant. Knight testified she thought she was in his way and moved to the side, but the man moved with her. She recalled he spoke, but she could not understand him until he raised his voice and told her that he had a knife and that he wanted the keys to her vehicle. She looked down and confirmed that he had a knife in his hand. He held the knife close to his waist. Knight testified that when she saw the knife, she knew she was in trouble and had to do something. She started hitting appellant with an umbrella and screamed for help. She testified she was afraid that appellant might cut, stab, or kill her. Knight recalled that Coker grabbed her arm, while appellant pulled her other arm. When they approached the mall door, appellant "took off running." Knight testified that she received no injuries or bruises from the altercation.

Rossie Coker testified that she met Knight at Central Mall on October 16, 2008. She recalled appellant approached them in the parking lot that day. Coker testified that appellant wanted Knight's vehicle, but Knight refused to give appellant her keys. Observing a knife in appellant's hands, Coker thought to herself they would not get out of

the situation without something bad happening. When appellant started pulling on Knight's arm, Coker grabbed Knight's other arm and started pulling her towards the mall doors. When they reached the mall doors, appellant let go and left.

Port Arthur Police Department dispatched Officer Reynolds to investigate Knight's report of an attempted robbery. He obtained a description from Knight and Coker of the events. He testified that a knife, depending on how it is used or intended to be used, is capable of causing death or serious bodily injury.

SUFFICIENCY OF THE EVIDENCE

Appellant contends that the evidence is legally insufficient to support his conviction. Specifically, appellant argues that the State "failed to adduce any evidence that appellant used or exhibited a deadly weapon." To determine the sufficiency of the evidence, the appellate court must review all of the evidence in the light most favorable to the verdict to determine whether 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, 61 L. Ed. 2d 560 (1979); *Hooper v. State*, 214 S.W.3d 9, 13 (Tex. Crim. App. 2007). Under the *Jackson* standard, the reviewing court gives deference to the jury's responsibility to fairly resolve conflicts in the testimony, to weigh the evidence, and to draw reasonable inferences from basic facts to ultimate facts. *Hooper*, 214 S.W.3d at 13.

Appellant complains there is no evidence that the instrument appellant possessed, if any, was a deadly weapon. A person commits robbery if, "in the course of committing

theft . . . and with intent to obtain or maintain control of the property, he . . . intentionally or knowingly threatens or places another in fear of imminent bodily injury or death.” Tex. Penal Code Ann. § 29.02(a)(2) (West 2003). A person commits aggravated robbery if he commits robbery and uses or exhibits a deadly weapon. *Id.* § 29.03(a)(2). A knife is not a deadly weapon per se; however, a jury may determine a knife is a deadly weapon based on the nature of its use or intended use. *See Thomas v. State*, 821 S.W.2d 616, 620 (Tex. Crim. App. 1991); *Garcia v. State*, 17 S.W.3d 1, 4 (Tex. App.—Houston [1st Dist.] 1999, pet. ref’d); *see also* Tex. Penal Code Ann. § 1.07(a)(17)(B) (West Supp. 2010) (defining deadly weapon as “anything that in the manner of its use or intended use is capable of causing death or serious bodily injury”).²

To determine whether a particular knife is a deadly weapon, courts have considered (1) the size, shape, and sharpness of the knife, (2) the manner of its use or intended use, (3) the nature or existence of inflicted wounds, and (4) evidence of the knife’s life-threatening capabilities. *Garcia*, 17 S.W.3d at 4. We will find the evidence sufficient to show that the knife was a deadly weapon when the knife was “displayed in a manner conveying an express or implied threat that serious bodily injury or death will be inflicted if the desire of the person displaying the knife is not satisfied.” *Billey v. State*, 895 S.W.2d 417, 422 (Tex. App.—Amarillo 1995, pet. ref’d). By producing a knife and exhibiting its blade, a

² We cite to the current version of this statute even though the Legislature has amended this section, because the subsequent amendments do not change the cited portion.

defendant can achieve the desired effect of placing a person in fear of death or serious bodily injury. *Id.* at 422-23.

Appellant argues that there is no evidence to establish that the knife appellant used in the robbery was a deadly weapon because the complainant sustained no injuries, no knife was recovered or introduced into evidence at trial, and there was no description of the knife during the trial.

The record does not contain a description of the knife. The only testimony characterizing the knife as a deadly weapon came from the investigating officer who explained generally that a knife can be a deadly weapon depending on its use or intended use. However, there is evidence that appellant displayed the knife in a manner that conveyed to Knight an express or implied threat that appellant would inflict serious bodily injury on her or kill her if his demands were not met. Knight testified that when appellant came at her with the knife, she believed it could cut, stab, or kill her. The manner in which appellant handled the knife and spoke to Knight, coupled with his physical proximity to Knight, caused Knight to believe her life was threatened. Coker also testified she saw a knife in appellant's hands, which made her think she and Knight were not going to get out of the situation without something bad happening. A rational fact finder could have found beyond a reasonable doubt that, based on the manner that appellant used the knife, the knife was capable of causing death or serious bodily injury, and therefore was a deadly weapon. *See* Tex. Penal Code Ann. § 1.07(a)(17)(B). Accordingly, we hold that the evidence was

legally sufficient to support appellant's conviction. Having overruled appellant's sole issue, we affirm the trial court's judgment.

AFFIRMED.

CHARLES KREGER
Justice

Submitted on January 24, 2011
Opinion Delivered March 30, 2011
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Before McKeithen, C.J., Kreger and Horton, JJ.