In the
Court of Appeals
Second Appellate District of Texas
at Fort Worth

No. 02-22-00244-CR

LAWRENCE RAY COLLIER, Appellant

V.

THE STATE OF TEXAS

On Appeal from the 485th District Court
Tarrant County, Texas
Trial Court No. 1672794D

Before Sudderth, C.J.; Wallach and Walker, JJ.
Memorandum Opinion by Chief Justice Sudderth

MEMORANDUM OPINION

Appellant Lawrence Ray Collier was convicted of aggravated assault with a deadly weapon after he used his truck to "ram[]" his ex-girlfriend's car and attempted to "run [her] off the road." *See* Tex. Penal Code Ann. § 22.02(a)(2). Collier raises a single appellate issue: the sufficiency of the evidence to support the trial court's finding that he used his truck as a deadly weapon.[1] *See id.* § 1.07(a)(17)(B). Because the evidence was sufficient to support this finding, we will affirm.

I. Standard of Review and Governing Law

To determine the sufficiency of the trial court's deadly weapon finding, we view the record in the light most favorable to the judgment to decide whether any rational factfinder could have found, beyond a reasonable doubt, that Collier used his truck as a deadly weapon. *Romano v. State*, 610 S.W.3d 30, 34 (Tex. Crim. App. 2020); *Couthren v. State*, 571 S.W.3d 786, 789–90 (Tex. Crim. App. 2019); *Mayo v. State*, No. 02-19-00404-CR, 2021 WL 2587065, at *6 (Tex. App.—Fort Worth June 24, 2021, no pet.) (mem. op., not designated for publication).

"By statute, a motor vehicle is not a deadly weapon per se, but [it] can be found to be a deadly weapon if it is used in a manner that is capable of causing death or serious bodily injury." *Couthren*, 571 S.W.3d at 789 (emphasis removed); *see* Tex. Penal Code Ann. § 1.07(a)(17); *Moore v. State*, 520 S.W.3d 906, 908 (Tex. Crim. App. 2017).

[1]Collier's case was tried to the bench, so the trial court acted as the factfinder.

So, our review of the deadly weapon finding requires us not only to determine whether Collier's manner of using his truck during the assault was "reckless or dangerous" but also to determine whether, during the commission of the assault, "the motor vehicle was capable of causing death or serious bodily injury," i.e., whether it presented an "actual danger" of causing such harm. *Couthren*, 571 S.W.3d at 790; *Sierra v. State*, 280 S.W.3d 250, 255 (Tex. Crim. App. 2009); *Mayo*, 2021 WL 2587065, at *6; *Hazlewood v. State*, No. 02-18-00372-CR, 2019 WL 2635567, at *1 (Tex. App.—Fort Worth June 27, 2019, pet. ref'd) (mem. op., not designated for publication). These two components are often "intertwined." *Mayo*, 2021 WL 2587065, at *6. But here, Collier's appeal focuses on the second: whether his use of the truck presented an actual danger to others.[2]

II. Sufficiency of the Deadly Weapon Finding

Collier argues that there was insufficient evidence that he used his vehicle as a deadly weapon because, according to him, the risk of injury was purely hypothetical; "there [wa]s no evidence that any other motorist or person was placed in danger of death or serious bodily injury due to [his] operation of the vehicle." We disagree.

[2]Although Collier discusses several of the factors relevant to the dangerousness of his conduct, he does not appear to challenge that aspect of the analysis. Instead, he acknowledges that there was "some evidence that [he] may have failed to control his vehicle or even exceeded the speed limit," and he argues that "[a]ssuming . . . [this] establishes reckless or dangerous conduct, it does not show that others were placed in actual danger."

Complainant Ola Bennett, Collier's ex-girlfriend, testified that Collier used his truck to try to "run [her] off the road" and "ram[]" her vehicle. Bennett explained that Collier had accused her of cheating in the past, and when she left his residence to drive home one night, she saw his truck following her.[3] As they were driving, Bennett recalled how Collier "got beside [her]," and when she took an exit, "he exit[ed] with [her]" and "tried to run [her] off the road." Bennett testified that she began "flying" in excess of the speed limit in hopes that the police would intervene, but Collier kept up with her and "rammed his truck into [her] car," hitting "the driver's side . . . door and . . . the bumper where the light is." Bennett then stopped her car and got out, at which point Collier accused her of cheating, told her he was "fixing to kill [her]," and tried to wrestle her phone away. Bennett flagged down other drivers for help, then she called 911, and Collier drove away.

Bennett's 911 call recording—which was admitted into evidence—corroborates her testimony. In the recording, Bennett can be heard yelling "help me" repeatedly and explaining in a panicked tone that "he hit my car." The 911 calls from passersby contained similar descriptions of the incident; one caller stated that "there's a guy

[3]When the police talked to Collier on the night of the incident, he admitted that he had "tried to chase [Bennett] down." He told the police that he had confronted her about something and "she stabbed [him]," so when she left, he followed her. Later, at trial, he testified that she "hit" him, and when she left, he thought she still had his phone, so he went looking for her and tried to catch up with her. He denied colliding with Bennett's vehicle or "ram[ming]" her car, though.

chasing her in a truck," and another caller reported that "[h]e hit her car and drove off."

Collier minimizes the severity of this incident. He points out that the photographs of his and Bennett's vehicles show very little damage, and he questions whether his conduct placed others in actual danger. But this argument has two independently fatal flaws.

First, Collier's minimization of the vehicle damage does not view the evidence in the light most favorable to the judgment. *See Romano*, 610 S.W.3d at 34 (noting in appeal following bench trial that, "[i]n reviewing a sufficiency claim, the appellate court looks at the evidence in the light most favorable to the verdict"). Bennett testified that she "end[ed] up having to get . . . a new car" because the "front end [of her vehicle] was messed up" from the collision. And although the photographs taken soon after the incident show limited damage to Collier's and Bennett's vehicles, these photographs are not necessarily inconsistent with Bennett's testimony; they depict only portions of the vehicles, and many of them are dark, making the extent of the damage difficult to see.[4] A reasonable factfinder could have believed Bennett's

[4]The dark photographs depict the state of the vehicles on the night of the incident or soon thereafter. Although Collier offered (and the trial court admitted) several truck photographs with better lighting, these photographs were taken at some point after the incident—long enough after the incident that Collier's cousin had driven his truck, she had replaced his rims, she had remedied his "bald" tire, and she had taken the truck for an inspection. The trial court was not required to believe Collier's testimony that he had not done any repairs to the body of his truck between the time of the incident and the time he took the photographs in better lighting.

testimony and found that the vehicle damage was more severe than Collier represents. *See id.* (noting in appeal following bench trial that "[a]n appellate court must defer to the fact[]finder's findings" and that the "fact[]finder is responsible for judging the credibility of witnesses and may find credible all, some, or none of the testimony that the witnesses give"); *Mayo*, 2021 WL 2587065, at *7 ("The jury was entitled to believe the [witnesses'] testimony and to agree with the [witnesses'] assessment of [defendant's] driving.").

And second, even if there had been little or no vehicle damage, a showing of actual danger does not require evidence of an actual collision, much less a severe collision. *See Mayo*, 2021 WL 2587065, at *6–7 (noting that neither case law nor common sense condition the existence of actual danger on its culmination in actual bodily injury or severe vehicle damage). "To justify a deadly weapon finding . . . the State need not establish that the use or intended use of an implement actually *caused* death or serious bodily injury; only that 'the manner' in which it was either used or intended to be used was '*capable*' of causing death or serious bodily injury." *Moore*, 520 S.W.3d at 908 (quoting *Tucker v. State*, 274 S.W.3d 688, 691 (Tex. Crim. App. 2008)). "The placement of the word 'capable' is crucial to understanding . . . [and] determining deadly[ ]weapon status." *Tucker*, 274 S.W.3d at 691; *see Moore*, 520 S.W.3d at 913 (holding that defendant used vehicle in a manner capable of causing death or serious bodily injury "even though it did not do so, and regardless of whether he intended it to"). And the actual-danger requirement is consistent with this key term.

"[A]n 'actual' danger is just a potentiality"—a "[p]eril; exposure to harm, loss, pain, or other negative result." *Moore*, 520 S.W.3d at 913 n.8 (emphasis removed) (quoting *Danger*, Black's Law Dictionary 476 (10th ed. 2014)); *see Danger*, Webster's Third New International Dictionary 573 (reprt. 2021) (1961) (defining "danger" as, among other things, "the state of being exposed to harm").

In *Mayo v. State*, for example, we held that the evidence was sufficient to support a deadly weapon finding when the defendant (Mayo) tailgated and wove between vehicles at a high rate of speed and in a manner that "narrowly avoid[ed] a collision."[5] 2021 WL 2587065, at *6–8. The law enforcement officers involved in the case observed that Mayo appeared to be "trying to run [other vehicles] off the road" or to "make them wreck." *Id.* at *7. And although Mayo's driving did not result in an actual collision, we rejected his argument that his driving presented only a hypothetical danger of death or serious bodily injury. *Id.* at *6. We explained that "[e]vidence of actual danger does not require a showing that . . . the defendant actually caused a collision"; actual danger "merely requires a showing that 'the manner of [the defendant's] use of his motor vehicle substantially "exposed" [another individual] . . . to death or serious bodily injury.'" *Id.* at *6–7 (quoting *Moore*, 520

[5]Mayo's driving involved other noteworthy maneuvers as well, including leading the police on a high-speed chase while "dr[i]v[ing] his vehicle at extremely high speeds—over 100 mph—in low-visibility conditions, talking on his cell phone '[p]ractically the entire time,' turning his headlights on and off, . . . and aggressively tailgating and swerving around other vehicles." *Mayo*, 2021 WL 2587065, at *1–2, *7.

S.W.3d at 913 n.8). Because there was sufficient evidence "that the manner in which Mayo used his vehicle exposed other highway motorists to death or serious bodily injury," the evidence was sufficient to support the deadly weapon finding. *Id.* at *7–8.

The same is true here. As in *Mayo*, Collier tried to run another driver off the road and was "flying" at high speeds.[6] *See id.* at *7. And whereas Mayo's driving did not cause a collision, Collier's driving did—he "rammed his truck into [Bennett's] car." *Cf. id.* at *1–2, *7 (noting that Mayo did not collide with any other cars, although he "tailgat[ed] another vehicle until both cars swerved off the road—narrowly avoiding a collision at highway speeds"). Just because Collier's "ramm[ing]" did not result in death or serious bodily injury does not mean that it was incapable of doing so, nor does it mean that Collier's driving did not expose Bennett to potential death or serious bodily injury.[7] *See Moore*, 520 S.W.3d at 908, 913 n.8.

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[6]Although Bennett did not remember how far in excess of the speed limit she and Collier were driving, she testified that she was "flying" in hopes that she would catch police attention and that she was going above the speed limit when Collier hit her vehicle.

[7]To support his argument that there was no evidence of actual danger, Collier relies upon three cases in which the drivers were convicted of intoxication-related offenses and our sister courts held that there was insufficient evidence that the drivers had used their vehicles as deadly weapons. *See Glover v. State*, No. 09-13-00084-CR, 2014 WL 1285134, at *1–2 (Tex. App.—Beaumont Mar. 26, 2014, pet. ref'd) (mem. op., not designated for publication); *Pointe v. State*, 371 S.W.3d 527, 532–33 (Tex. App.—Beaumont 2012, no pet.); *Foley v. State*, 327 S.W.3d 907, 916–17 (Tex. App.—Corpus Christi–Edinburg 2010, pet. ref'd) (mem. op.). But these cases are not binding on us.

A reasonable factfinder could have found, beyond a reasonable doubt, that Collier's chasing Bennett as she was "flying," his attempt to run Bennett off the road, and his "ramm[ing] his truck into [her] car" exposed Bennett to the risk of death or serious bodily injury. In other words, a reasonable factfinder could have found that

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Plus, we have distinguished these three exact cases on multiple occasions, and they are similarly distinguishable here. *See Orlando v. State*, No. 02-22-00239-CR, 2023 WL 3251010, at *3 n.3 (Tex. App.—Fort Worth May 4, 2023, pet. ref'd) (mem. op., not designated for publication) (noting appellant's reliance on *Glover*, *Pointe*, and *Foley*, and distinguishing all three); *Serrano v. State*, 636 S.W.3d 717, 726–27 (Tex. App.—Fort Worth 2021, pet. ref'd) (similar); *Hazlewood*, 2019 WL 2635567, at *2 (similar).

The "*Glover* . . . court found the evidence legally insufficient . . . because although the appellant had been driving over the speed limit while intoxicated, the record did 'not contain any other evidence that [the defendant] was driving recklessly.'" *See Orlando*, 2023 WL 3251010, at *3 n.3 (quoting *Glover*); *Glover*, 2014 WL 1285134, at *2. But here, there was evidence that Collier "rammed" another vehicle while exceeding the speed limit and that he "tried to run [Bennett] off the road." *See Orlando*, 2023 WL 3251010, at *3 n.3 (noting that, unlike *Glover*, there was "abundant evidence of Orlando's reckless or dangerous driving").

"[I]n *Pointe*, the evidence was found insufficient . . . because officers determined that another driver had pulled out in front of the appellant's car and was at fault for the collision." *Id.*; *see Pointe*, 371 S.W.3d at 532. "No such mitigating factors are present here." *See Orlando*, 2023 WL 3251010, at *3 n.3 (distinguishing *Pointe* on same basis).

Finally, "[i]n *Foley*, . . . there was no evidence that the appellant's reckless driving actually endangered anyone because . . . the closest person [to him] was working inside an office building sixty feet away." *See id.* (summarizing *Foley*); *see Foley*, 327 S.W.3d at 917. But here, as in *Orlando*, other people were in proximity to Collier. *See Orlando*, 2023 WL 3251010, at *3 n.3 (distinguishing *Foley* by noting that "there were multiple people in close proximity [to Orlando]"). In fact, Collier's dangerous driving was targeted at another driver—Bennett—and he got close enough to "ram[]" her car.

Collier used his truck as a deadly weapon in his commission of assault. *See* Tex. Penal Code Ann. §§ 1.07(a)(17)(B), 22.02(a)(2). We overrule Collier's sole issue.

III. Conclusion

Having overruled Collier's sole issue, we affirm the trial court's judgment. Tex. R. App. P. 43.2(a).

/s/ Bonnie Sudderth

Bonnie Sudderth
Chief Justice

Do Not Publish
Tex. R. App. P. 47.2(b)

Delivered: September 7, 2023