NO. 07-03-0091-CR

IN THE COURT OF APPEALS

FOR THE SEVENTH DISTRICT OF TEXAS

AT AMARILLO

PANEL E

FEBRUARY 11, 2004

JON P. LESTER, APPELLANT

v.

THE STATE OF TEXAS, APPELLEE

FROM THE 140TH DISTRICT COURT OF LUBBOCK COUNTY;

NO. 2000-434752; HON. JIM BOB DARNELL, PRESIDING

Before QUINN and REAVIS, JJ., and BOYD, S.J.[1]

Memorandum Opinion

In two issues, appellant Jon P. Lester challenges his conviction of aggravated assault with a deadly weapon and the resulting penal sentence of 25 years confinement in the Institutional Division of the Texas Department of Criminal Justice. In those issues,

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[1]John T. Boyd, Chief Justice (Ret.), Seventh Court of Appeals, sitting by assignment. Tex. Gov't Code Ann. §75.002(a)(1) (Vernon Supp. 2004).

he contends the evidence was legally and factually insufficient to support the verdict of the jury that he used a telephone as a deadly weapon. We affirm the judgment of the trial court.

On October 11, 2000, appellant was indicted in two counts for the offense of aggravated assault. In the first count, he was charged with using a knife in a manner capable of causing death and serious bodily injury. In the second count, he was charged with using a telephone in a manner capable of causing death and serious bodily injury. After trial, the jury found him guilty of both counts.

In this appeal, however, he limits his challenges to the legal and factual sufficiency of the evidence to sustain his conviction under the second count, *i.e.,* the use of the telephone. He does not contest in any way the sufficiency of the evidence to sustain his conviction under count one of the indictment. Additionally, he does not contest the finding that he had been previously convicted of two felony offenses as alleged in the indictment.

Because of his two prior felony convictions, on the first count alone, appellant faced a possible sentence of 25 to 99 years or life imprisonment. *See* Tex. Pen. Code Ann. § 22.02(a)(2) (Vernon Supp. 2004); Tex. Pen. Code Ann. § 12.42(d) (Vernon 2004). The 25-year punishment assessed by the jury was the minimum punishment that could be assessed.

Under this record, because of the unchallenged validity of appellant's conviction under the first count, further discussion of appellant's suggested issues is not necessary

to the disposition of this appeal. Suffice it to say, those issues are overruled and the judgment of the trial court is affirmed.

John T. Boyd
Senior Justice

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