



**In The
Court of Appeals
Seventh District of Texas at Amarillo**

No. 07-18-00119-CR

ROCKY L. RODRIGUEZ, APPELLANT

V.

THE STATE OF TEXAS, APPELLEE

On Appeal from the 137th District Court
Lubbock County, Texas
Trial Court No. 2007-415,693, Honorable Cecil Puryear, Presiding

September 17, 2018

MEMORANDUM OPINION

Before QUINN, C.J., and CAMPBELL and PARKER, JJ.

Rocky L. Rodriguez (appellant) was convicted of four counts of aggravated assault with a deadly weapon. The deadly weapon was a truck he used to twice ram another vehicle. Multiple occupants were in the vehicle appellant rammed, and he apparently did so after engaging in an altercation with one or more individuals in the other vehicle. Once finished and upon the arrival of police, appellant sped away. Appellant's sole issue implicates the sufficiency of the evidence underlying the deadly weapon findings. He argues that the findings were not supported by legally sufficient evidence. We affirm.

The applicable standard of review is that recently described by the Court of Criminal Appeals in *Villa v. State*, 514 S.W.3d 227, 232 (Tex. Crim. App. 2017). We apply it here.

Next, a deadly weapon is defined as 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.” TEX. PENAL CODE ANN. § 1.07(a)(17)(A), (B) (West Supp. 2017). While a motor vehicle is not manifestly designed, made, or adapted for the purpose of inflicting death or serious bodily injury, it may, in the manner of its use or intended use be capable of causing death or serious bodily injury. *Moore v. State*, 520 S.W.3d 906, 908 (Tex. Crim. App. 2017).

To satisfy the elements of the aforementioned definition, the State need not prove that the use or intended use of the vehicle actually caused death or serious bodily injury but only that the manner in which it was either used or intended to be used was capable of causing death or serious bodily injury. *Id.* Nor must it prove that the actor actually intended death or serious bodily injury when using the vehicle. *Id.* Rather, to sustain a deadly weapon finding, the evidence must show that 1) the vehicle met the definition of a deadly weapon; 2) the deadly weapon was used or exhibited during commission of the offense; and 3) other people were put in actual danger. *Brister v. State*, 449 S.W.3d 490, 494 (Tex. Crim. App. 2014); *Stacks v. State*, No. 07-15-00336-CR, 2017 Tex. App. LEXIS 7690, at *5 (Tex. App.—Amarillo Aug. 14, 2017, pet. ref’d) (mem. op., not designated for publication).

An accused ramming another vehicle with his own may reasonably be viewed as driving in a reckless or dangerous manner. *Ibarra v. State*, No. 13-12-00118-CR, 2013 Tex. App. LEXIS 169, at *18 (Tex. App.—Corpus Christi Jan. 10, 2013, no pet.) (mem. op., not designated for publication). Taking the time to ram the vehicle a second time would allow one to reasonably infer that the person was intentionally engaging in that dangerous conduct. So, evidence exists upon which a rational factfinder could reasonably infer beyond reasonable doubt that appellant intentionally drove his truck in a dangerous manner when he twice struck his target vehicle. To that we add other evidence. It consists of 1) appellant accelerating to about 30 to 35 mph as he approached his target, 2) his target standing relatively motionless near a parking lot exit as he accelerated, 3) appellant's attempting to "put the truck on top of the car" or attempting to climb atop the target with his truck, and 4) his disregard for the occupants within the target vehicle as he struck.

It is not unreasonable to infer that a truck atop another vehicle could crush the lower vehicle. When people are within the lower vehicle, it also is reasonable to infer that they risked serious injury, if not death. That no one suffered serious injury may be miraculous, but it is inconsequential to the issue at hand. As previously said, an object's status as a deadly weapon is not conditioned upon actual injury.

Given the aforementioned evidence of record, a rational jury could reasonably find beyond reasonable doubt that 1) appellant's truck met the definition of a deadly weapon; 2) the deadly weapon was used or exhibited during commission of the offense; and 3) other people were put in actual danger. See *Brister*, 449 S.W.3d at 494. Thus, we find legally sufficient evidence supporting the deadly weapon findings.

The appellant's sole issue is overruled, and the judgments are affirmed.

Brian Quinn
Chief Justice

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