In The
Court of Appeals
Seventh District of Texas at Amarillo

No. 07-21-00156-CR

BEAUFORD DESHAWN DANIELS, APPELLANT

V.

THE STATE OF TEXAS, APPELLEE

On Appeal from the 46th District Court
Wilbarger County, Texas
Trial Court No. 12,448; Honorable Dan Mike Bird, Presiding

May 13, 2022

MEMORANDUM OPINION

Before PIRTLE and PARKER and DOSS, JJ.

Appellant, Beauford Deshawn Daniels, appeals from his conviction by jury of the second-degree felony offense of aggravated assault with a deadly weapon.[1] Appellant's

[1] TEX. PENAL CODE ANN. § 22.02(a)(2). A second degree felony is punishable by imprisonment for a term of not more than twenty years or less than two years and a fine not to exceed $10,000. *See* TEX. PENAL CODE ANN. § 12.33.

punishment range was double-enhanced by two prior felony convictions.[2] The jury assessed his sentence at seventy years imprisonment. Appellant challenges his conviction through six issues. We will affirm.

BACKGROUND

Appellant was charged by indictment with "intentionally, knowingly and recklessly caus[ing] bodily injury to Briana Yvette Gray by striking Briana Yvette Gray on her body, and the defendant did then and there use or exhibit a deadly weapon, to-wit: a shower rod and his hands." At trial, the State presented the testimony of Briana (the victim), a neighbor who witnessed some of the assault, several police officers, and a registered nurse.

The thirty-three-year-old victim, Briana, testified that at the time of the assault (two years earlier), she weighed 448 pounds.[3] She said she had "heart problems, high blood pressure, and a reading disability." Briana told the jury that in early 2019 she thought she and Appellant were boyfriend and girlfriend, but the relationship was "off and on." By May 2019, when this incident occurred, the couple were not together. The day before the assault, Briana was suffering some abdominal pain. That evening, she called her mother to see if she could take an extra blood pressure pill. She took the additional medication, then took a nap until approximately 12:40 a.m.

[2] TEX. PENAL CODE ANN. § 12.42(d). When a defendant has previously been finally convicted of two felony offenses, and the second previous felony conviction is for an offense that occurred subsequent to the first previous felony conviction having become final, on conviction the defendant shall be subject to punishment by imprisonment in the Texas Department of Criminal Justice for life, or for any term of not more than 99 years or less than 25 years.

[3] By the time of trial, Briana weighed 135 pounds.

Briana awoke to the sound of a box shaking in her living room. She saw Appellant in her apartment and asked him how he got in. He told her she needed to wash his clothes and then said, "I knew you were talking to other men and I'm going to find out about it." Briana denied the accusation, but Appellant hit her in the face with his fist. He also punched her and choked her. Briana testified that he then told her to "take [her] fat ass and go and take a shower . . . ." She went into the bathroom and Appellant "ripped [her] clothes off" and started beating her. He "took the shower curtain rod and was beating [her] . . . . [She] was going in and out of consciousness."[4] She testified she knew she lost consciousness "over four times" but that she "lost count." Briana told the jury Appellant "was punching [her] in [the] stomach and slamming [her] on the ground and just beating [her]." He also caused her head to hit the shower wall. A photograph of a large crack in the shower was admitted into evidence at trial.

Briana testified that at one point during the assault, she and Appellant were in the living room and he was choking her and beating her. She said the door was open and her neighbor, Angelica Wilkinson, saw her. Briana ran out the back door and was screaming. Appellant pulled her hair, causing her to collapse on one knee. He dragged her back into the apartment by her legs and continued beating her. At this point, he picked her up off the ground and threw her on the ground, causing her head to hit the dryer in the process.

Briana testified that as a result of the assault, she suffered "a lot of pain." She said specifically she suffered pain in her head, neck, and back and that after the assault, she continued to have trouble with her memory, felt dizzy, and had headaches. She testified

[4] The responding detective testified he observed "the shower curtain that's been torn down" when he responded to the call concerning the assault.

her “head was hurting all the time” and those effects persisted for about three weeks after the assault. Appellant also “busted” her lip and broke her tooth, causing her to have toothaches. She also had a bruise on her stomach from Appellant “punching [her] and hitting [her] with the shower rod.”

Briana testified she eventually found her way out of her bathroom, crawled to the living room, and put her clothes on. She was in the living room “rocking back and forth wondering what happened.” Appellant was no longer in the apartment. Eventually, her neighbor, Angelica, came inside and took her back to her apartment for safety. At Briana’s request, she also took her television and computer.[5] They called 911 from Angelica’s apartment.

Angelica also testified. On direct examination she testified that in May 2019, she was living behind Briana. She testified that, on the night in question, she “heard screaming” and saw Briana “running towards” her, but Appellant grabbed her from behind, placing his arm around her neck. Appellant was pulling Briana “by her hair.” She remembered Appellant grabbing Briana and pulling her by her feet after she had collapsed. Angelica recounted how Appellant dragged Briana and how she was holding onto the concrete with her hands. She stated, “he lifted her by her feet or her ankles and picked her up and dropped her down.”[6] Angelica testified that Briana “landed on her head or her head tilted.” She also testified she was friends with Appellant and had even visited

[5] Briana testified the computer was her late husband’s and was “the only item” she “had left of him.” She said she had just purchased the television. She told the jury she asked Angelica to carry those two items out of her apartment in case Appellant returned. During cross-examination, Angelica testified she carried one of them while Briana carried “one in her arm while I had her in the other arm.”

[6] During cross-examination, counsel attempted to discredit this testimony in noting that at the time of the assault, Briana weighed over four hundred pounds. However, both Briana and Angelica testified Appellant lifted Briana up by the feet or ankles. The State utilized this testimony in its closing to illustrate Appellant’s strength.

him while he was in custody. Further testimony recounted how Appellant dragged Briana into the apartment and how she hit her head on the stove as they turned the corner and Appellant closed the back door. Angelica also testified that approximately thirty minutes later, Appellant knocked on her back door and told her, "Go check on that bitch because she's probably dead." She told the jury that at that time Appellant "had a pole in his hand." On further questioning, Angelica testified she recognized the pole as the shower rod from Briana's shower. She said Appellant "had it in his hand that night." She testified he "chunked it to his right, to my left right in front of my windows of my living room outside." Angelica said Appellant told her she "better fix it and not to call the cops." Appellant then left the apartment on foot.

Angelica left her apartment and went to Briana's. When she found her, Briana was on the living room floor "limp" and "seemed like she was rocking back and forth." Angelica splashed Briana with water to get her attention and told her they needed to leave. Briana showed Angelica the area of the shower where Appellant had hit her. Angelica said she did not remember the crack in the shower being present three days prior when she took a shower there. After looking at the bathroom, Angelica retrieved Briana's television and computer and she and Briana left and went to her apartment. From there, they called the police and Briana's mother. Briana sought and received medical care for her injuries.

ANALYSIS

ISSUES ONE AND TWO—TRIAL COURT'S REFUSAL TO PERMIT CERTAIN TESTIMONY

By his first two issues, Appellant contends the trial court abused its discretion in refusing to permit Angelica's testimony concerning the injuries she observed on Briana and her observation of Briana's reaction to those injuries. By that refusal, Appellant

argues, the trial court denied him his Sixth Amendment right to cross-examine witnesses against him as guaranteed by the United States and Texas Constitutions.

Both the United States Constitution and the Texas Constitution provide that an accused shall have the right to confront witnesses against him. *See* U.S. CONST. amend. VI; TEX. CONST. art. I, § 10.

> The Sixth Amendment right to confront witnesses includes the right to cross-examine witnesses to attack their general credibility or to show their possible bias, self-interest, or motives in testifying. This right is not unqualified, however; the trial judge has wide discretion in limiting the scope and extent of cross-examination. Generally, the right to present evidence and to cross-examine witnesses under the Sixth Amendment does not conflict with the corresponding rights under state evidentiary rules.

Castillo v. State, No. 09-20-00026-CR, 2021 Tex. App. LEXIS 9884, at *7-8 (Tex. App.—Beaumont Dec. 15, 2021, no pet.) (mem. op., not designated for publication) (citing *Hammer v. State*, 296 S.W.3d 555, 561 (Tex. Crim. App. 2009)). A trial court violates a defendant's right of confrontation if it improperly limits *appropriate* cross-examination. *Castillo*, 2021 Tex. App. LEXIS 9884, at *8 (citing *Carroll v. State*, 916 S.W.2d 494, 497 (Tex. Crim. App. 1996)). Whether rooted in the Due Process Clause of the Fourteenth Amendment or the Confrontation Clause of the Sixth Amendment, the Constitution guarantees every criminal defendant the opportunity to present a complete defense. *Castillo*, 2021 Tex. App. LEXIS 9884, at *8 (citing *Crane v. Kentucky*, 476 U.S. 683, 690, 106 S. Ct. 2142, 90 L. Ed. 2d 636 (1986)). The constitutional right to present a defense includes the right to compulsory process and the rights to confront and cross-examine a witness. *Castillo*, 2021 Tex. App. LEXIS 9884, at *8 (citing *Pointer v. Texas*, 380 U.S. 400, 405, 85 S. Ct. 1065, 13 L. Ed. 2d 923 (1965)).

However, a defendant's right to cross-examine a witness is not unqualified. *Castillo*, 2021 Tex. App. LEXIS 9884, at *8 (citation omitted). A defendant "is not entitled to 'cross-examination that is effective in whatever way, and to whatever extent,' he might wish." *Id.* at *8 (citation omitted). Trial judges have wide latitude to limit the scope of cross-examination by imposing reasonable restrictions on cross-examination. *Id.* (citation omitted). A trial judge may limit the scope so long as the limits do not infringe upon the Confrontation Clause's guarantee of "'an opportunity for effective cross-examination.'" *Id.* at *9 (citation omitted).

Here, during cross-examination, Angelica was asked if she recalled "indicating during [a visit to Appellant in jail] that [Briana] was exaggerating her injuries?" The State timely objected on the grounds that the response would constitute hearsay. The court held a hearing outside the presence of the jury wherein counsel indicated he wished to ask Angelica whether she told Appellant that Briana exaggerated her injuries and if she denied doing so, he wished to play her a recording of the conversation. Counsel sought permission to allow Angelica to provide her opinion regarding Briana's exaggeration of her injuries, but the trial court concluded it did not believe Angelica could "give the opinion which is the basis for [counsel's] impeachment." The court told counsel he was permitted to "ask her in the form of a fact witness, did she observe the injuries and what were they." But, the court did not permit counsel to elicit Angelica's *opinion* about how Briana "either exaggerated them or not."

Following that ruling, counsel made a bill of exception setting forth the testimony he wished to elicit from Angelica before the jury. When asked whether she thought or said that Briana was exaggerating her injuries, she said she could not remember and did not want to lie. She simply could not remember. The trial court affirmed its previous

ruling that it would not permit testimony concerning Angelica's apparent statement that Briana was exaggerating her injuries.

As the State notes, during testimony for the bill of exception, Angelica did not provide an opinion as to whether Briana exaggerated the injuries she sustained from the assault by Appellant. Thus, there was no opinion from which counsel could have utilized the recorded statement for impeachment purposes. Furthermore, counsel was permitted to ask Angelica questions concerning her observations of Briana's injuries. Based on the record before us, we find the trial court did not abuse its discretion in refusing to allow the testimony counsel proffered.[7] Accordingly, we overrule Appellant's first and second issues.

ISSUES THREE—TRIAL COURT'S REFUSAL TO SUBMIT USE AND MANNER INSTRUCTION TO JURY

Through his third issue, Appellant argues the trial court abused its discretion when it refused to submit his requested "use and manner of deadly weapon" charge to the jury.

During the charge conference, counsel told the court he had "two objections." His first objection is the subject of his third appellate issue. At trial, he objected to the language "use and manner." He said "[w]e feel it should be incorporated in the application

[7] We note also that even if the trial court erred here, the record does not demonstrate Appellant was harmed by the alleged limitation of his cross-examination of Angelica. Even if Angelica remembered something about the potential exaggeration of Briana's injuries and even if the recorded statement was admitted into evidence, that information was relevant only to the weight and credibility of the testimony of the witnesses. The ultimate question for the jury was whether Appellant was guilty of the offense of aggravated assault with a deadly weapon. That necessitated the jury to find Appellant used something that was capable of causing serious bodily injury or death. Two witnesses, the detective and the nurse, specifically testified the shower rod was capable of causing such harm. The severity of Briana's injuries might have illustrated that capability, but because the State is not required to prove the weapon used caused serious bodily injury or death, the fact that the injuries might have been less serious is unlikely to have dictated the outcome of the jury's resolution of this matter. As such, any error concerning testimony about the exaggeration of Briana's injuries was harmless beyond a reasonable doubt. *See Jones v. State*, 571 S.W.3d 764, 770 (Tex. Crim. App. 2019) (citing *Delaware v. Van Arsdall*, 475 U.S. 673, 106 S. Ct. 1431, 89 L. Ed. 2d 674 (1986)).

paragraph and it is not, so we would object on the grounds it's not in this the application paragraph." The trial court overruled the objection. Counsel made no further objections concerning "use and manner."

On appeal, Appellant argues he was entitled to a "use and manner" instruction because the shower rod was not shown to be a deadly weapon per se. As such, it was for the jury to determine if, by the use and manner of the shower rod, it became a deadly weapon. However, as the State notes, Appellant did not specify his objection, nor did he explain the basis on which he believed himself entitled to a use and manner instruction. In fact, it is difficult from the record to ascertain what it is Appellant requested of the trial court other than the incorporation of the language "use and manner" in the application paragraph. In failing to provide a specific and clear objection, Appellant failed to sufficiently apprise the trial court of the nature of his objection. *See* TEX. CODE CRIM. PROC. ANN. art. 36.14;[8] *Pennington v. State*, 697 S.W.2d 387, 390 (Tex. Crim. App. 1985).

[8] This article provides as follows:

> Subject to the provisions of Article 36.07 in each felony case and in each misdemeanor case tried in a court of record, the judge shall, before the argument begins, deliver to the jury, except in pleas of guilty, where a jury has been waived, a written charge distinctly setting forth the law applicable to the case; not expressing any opinion as to the weight of the evidence, not summing up the testimony, discussing the facts or using any argument in his charge calculated to arouse the sympathy or excite the passions of the jury. Before said charge is read to the jury, the defendant or his counsel shall have a reasonable time to examine the same and he shall present his objections thereto in writing, distinctly specifying each ground of objection. Said objections may embody errors claimed to have been committed in the charge, as well as errors claimed to have been committed by omissions therefrom or in failing to charge upon issues arising from the facts, and in no event shall it be necessary for the defendant or his counsel to present special requested charges to preserve or maintain any error assigned to the charge, as herein provided. The requirement that the objections to the court's charge be in writing will be complied with if the objections are dictated to the court reporter in the presence of the court and the state's counsel, before the reading of the court's charge to the jury. Compliance with the provisions of this Article is all that is necessary to preserve, for review, the exceptions and objections presented to the charge and any amendment or modification thereof. In no event shall it be necessary for the defendant to except to the action of the court in over-ruling defendant's exceptions or objections to the charge.

See TEX. CODE CRIM. PROC. ANN. art. 36.14.

Such a general objection is not sufficient to preserve error for our review. *Id.* (citations omitted). We overrule Appellant's third issue.

ISSUE FOUR—TRIAL COURT'S REFUSAL TO SUBMIT "USE OF A DEADLY WEAPON" AS A SPECIAL ISSUE TO THE JURY

In his fourth issue, Appellant contends the trial court abused its discretion when it failed to submit to the jury a special issue on the use of a deadly weapon. This was the second objection set forth by Appellant during the charge conference. He told the trial court, "we would like a special issue on the deadly weapon so the jury can find a deadly weapon in and of itself." The trial court denied that request.

On appeal, Appellant argues the requested special issue was relevant to "the contradictory evidence as to whether a deadly weapon was used (shower rod) in causing the injuries." He further asserts that because the "shower rod was not shown to be a 'deadly weapon per se' . . . it remained to be decided by the trier of fact (the jury) if in its manner and use it became a deadly weapon."

Where the jury is the trier of fact, the trial court may not properly enter that it has made an affirmative finding concerning the defendant's use or exhibition of a deadly weapon or firearm during the commission of the offense unless:

1) the deadly weapon or firearm has been specifically pled as such (using the nomenclature "deadly weapon") in the indictment ([a]pplies where the verdict reads "guilty as charged in the indictment");

2) where not specifically pled in "1)" above as a deadly weapon or firearm, the weapon pled is per se a deadly weapon or a firearm; or,

3) a special issue is submitted and answered affirmatively.

Whitley v. State, No. 13-19-00173-CR, 2020 Tex. App. LEXIS 1633, at *12 (Tex. App.—Corpus Christi Feb. 27, 2020, pet. ref'd) (mem. op., not designated for publication) (citing *Polk v. State*, 693 S.W.2d 391, 396 (Tex. Crim. App. 1985)).

Here, the indictment alleged that Appellant "intentionally, knowingly, and recklessly cause[d] bodily injury to Briana Yvette Gray by striking Briana Yvette Gray on her body, and the defendant did then and there use or exhibit a deadly weapon, to-wit: a shower rod and his hands." The verdict form returned by the jury read, "We, the jury, find the defendant, Beauford Deshawn Daniels, guilty of the offense of aggravated assault with a deadly weapon as charged in the indictment." This satisfies the first requirement in *Polk* as set forth above and thus, the trial court properly entered the deadly-weapon finding. As a result, we overrule Appellant's fourth issue.

ISSUE FIVE—SUFFICIENCY OF THE EVIDENCE TO SUPPORT USE OF A DEADLY WEAPON

Through his fifth issue, Appellant contends the State failed to establish his use of a deadly weapon in the alleged assault, and thus, there is insufficient evidence to support his conviction for aggravated assault with a deadly weapon.

We review the sufficiency of the evidence to support a conviction by viewing all the evidence in the light most favorable to the verdict to determine whether any rational fact finder 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). This standard gives full play to the fact finder's responsibility to resolve testimonial conflicts, weigh the evidence, and draw reasonable inferences from basic facts to ultimate facts. *Id.*; *Murray v. State*, 457 S.W.3d 446, 448 (Tex. Crim. App. 2015). The fact finder

is the sole judge of the evidence's weight and credibility. *See* TEX. CODE CRIM. PROC. ANN. art. 38.04; *Dobbs v. State*, 434 S.W.3d 166, 170 (Tex. Crim. App. 2014).

Consequently, when performing an evidentiary sufficiency review, we may not re-evaluate the weight and credibility of the evidence and substitute our judgment for that of the fact finder's. *Jackson v. State*, No. 05-19-01043-CR, 2021 Tex. App. LEXIS 1533, at *2-3 (Tex. App.—Dallas March 2, 2021, pet. ref'd) (mem. op., not designated for publication) (citing *Montgomery v. State*, 369 S.W.3d 188, 192 (Tex. Crim. App. 2012)). Rather, we determine whether the necessary inferences are reasonably based on the cumulative force of the evidence when viewed in the light most favorable to the verdict. *Jackson*, 2021 Tex. App. LEXIS 1533, at *3 (citation omitted). We must also presume that the fact finder resolved any conflicting inferences in the verdict's favor and defer to that resolution. *Id.* (citation omitted). The standard of review is the same for direct and circumstantial evidence cases because circumstantial evidence is as probative as direct evidence in establishing guilt. *Id.* (citations omitted).

A person commits assault if he intentionally, knowingly, or recklessly causes bodily injury to another. *See* TEX. PENAL CODE ANN. § 22.01(a)(1). A person commits aggravated assault if the person causes serious bodily injury or uses or exhibits a deadly weapon during the commission of the assault. TEX. PENAL CODE ANN. § 22.02(a) (1), (2). The Penal Code defines deadly weapon as "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)(B) (emphasis added). Serious bodily injury is "bodily injury that causes 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." TEX. PENAL CODE ANN. § 1.07(a)(46).

To justify a deadly-weapon finding, the State is not required to prove that the weapon actually caused death or serious bodily injury. *Jackson*, 2021 Tex. App. LEXIS 1533, at *4 (citing *Moore v. State*, 520 S.W.3d 906, 908 (Tex. Crim. App. 2017); *Tucker v. State*, 274 S.W.3d 688, 691 (Tex. Crim. App. 2008)). The State is also not required to prove that death or seriously bodily injury was intended. *Jackson*, 2021 Tex. App. LEXIS 1533, at *4 (citing *Rivers v. State*, No. 01-08-00397-CR, 2009 Tex. App. LEXIS 8063, at *3 (Tex. App.—Houston [1st Dist.] Oct. 15, 2009, no pet.) (mem. op., not designated for publication) (citing *McCain v. State*, 22 S.W.3d 497, 503 (Tex. Crim. App. 2000)). The State need only prove that the manner in which the weapon was used or intended to be used was "capable" of causing death or serious bodily injury. *Jackson*, 2021 Tex. App. LEXIS 1533, at *4 (citing *Moore*, 520 S.W.3d at 908; *Tucker*, 274 S.W.3d at 691). "Even without expert testimony or a description of the weapon, the injuries suffered by the victim can by themselves be a sufficient basis for inferring that a deadly weapon was used." *Jackson*, 2021 Tex. App. LEXIS 1533, at *4 (citing *Tucker*, 274 S.W.3d at 691-92).

Here, Briana testified Appellant punched, beat, and choked her with his hands and that he used a shower rod to beat her. She told the jury the assault caused her to lose consciousness at least four times. She testified she was "lucky I got out and I was alive. I was just trying to escape." Briana suffered several injuries from the assault, including a busted lip, a broken tooth, and bruising and other injuries to her body. Photographs of the injuries were admitted into evidence at trial. Further, Briana testified that for about three weeks after the assault, she had trouble with her memory, was dizzy, and suffered pounding headaches.

Angelica testified she heard Briana screaming that day and saw her run out of her back door toward Angelica's apartment. She saw Appellant grab Briana from behind

around the neck and pull her hair. He started to drag Briana back to the apartment, but she fell. Appellant began dragging Briana by her feet and then lifted her up by her feet or ankles and dropped her to the ground. Briana landed on her head. Appellant then dragged Briana back to the apartment. Angelica said Briana hit her head on the stove as Appellant dragged her inside and he then shut the door. About half an hour later, Angelica testified Appellant knocked on her back door and told her to go "check on that bitch because she's probably dead." Angelica said he threw a shower curtain rod down by the window near her living room and left on foot. Angelica found Briana inside her apartment, "limp." Briana was rocking back and forth. She had to splash water at her to get her attention.

A Vernon police detective testified to his investigation and observation of Briana's apartment after the assault.[9] He opined that based on his observations, an "assault occurred, an assault happened in the bathroom and in the shower area specifically." He took several photographs that showed areas of blood in different locations.[10] Photographs showing blood near the showerhead and on the mirror were admitted into evidence at trial. He also took photographs of Briana, one of which showed a bruise to her abdomen that was about seven inches in length and "consistent with a shower rod or being hit with a stick." The detective also identified the shower rod that was located outside Angelica's apartment. He answered affirmatively when asked whether the shower rod was "held by the Defendant and used to strike a person about their head or their body" it could be considered a deadly weapon.

[9] The detective testified he was the "on-call detective that night, and it's their job to call me when it's a severe case."

[10] He also noted he saw "a big ole hole in the corner [of the shower] that you know shouldn't be there because it would have been a water issue."

The nurse who treated Briana for her injuries in the emergency room testified Briana sustained injuries to her nose, upper lip, lower face, abdomen, and back. She also noted Briana lost consciousness three to four times and had a head injury. The nurse testified loss of consciousness from a head injury can lead "anywhere from just a concussion to a brain bleed." She also said concussions can cause nausea, headaches, memory loss, dizziness, confusion, and difficulty relating events in chronological order. She noted Briana suffered from several of these. She further testified she was familiar with the legal definition of a deadly weapon and answered "Oh, definitely" when asked whether a shower rod used by a person to hit another person on the head would be capable of causing serious bodily injury or death.

From this evidence, the jury could have determined Appellant used his hands and the shower rod to beat Briana, causing significant injuries that could have caused serious bodily injury or death. Testimony and photographic evidence described and illustrated those injuries and their severity. Also, following the assault, Appellant told Angelica she needed to go check on Briana because she was "probably dead." The jury could have taken this to mean Appellant had knowledge of the severity of the assault he committed against Briana. *See Romero v. State*, 331 S.W.3d 82, 83 (Tex. App.—Houston [14th Dist.] 2010, pet ref'd) (noting factors a jury may consider in determining whether an object is a deadly weapon).

Based on this evidence, viewed in the light most favorable to the verdict, we find a rational jury could have reasonably concluded that Appellant used his hands and the shower rod in a manner that was capable of causing serious bodily injury or death. We thus resolve Appellant's fifth issue against him.

ISSUE SIX—*BATSON* MOTION

By and through his final issue, Appellant complains that the trial court abused its discretion and committed reversible error when it overruled his *Batson* motion challenging the strike of a particular African-American juror. *See Batson v. Kentucky*, 476 U.S. 79, 89 106 S. Ct. 1712, 1719, 90 L. Ed. 2d 69 (1986).

The Equal Protection Clause of the Fourteenth Amendment to the United States Constitution prohibits race-based jury selection. U.S. CONST. amend. XIV, § 1; *Batson*, 476 U.S. at 89; *Jasper v. State*, 61 S.W.3d 413, 421 (Tex. Crim. App. 2001); *see* Tex. CODE CRIM. PROC. ANN. art. 35.261(a). In the face of perceived purposeful discrimination, a defendant may request a *Batson* hearing to address the challenge. *Mathews v. State*, No. 02-19-00173-CR, 2020 Tex. App. LEXIS 7210, at *1-2 (Tex. App.—Fort Worth Sep. 3, 2020, no pet.) (mem. op., not designated for publication) (citing TEX. CODE CRIM. PROC. ANN. art. 35.261(a)).

Trial courts follow a three-step process to resolve *Batson* challenges. *Mathews*, 2020 Tex. App. LEXIS 7210, at *2 (citing *Snyder v. Louisiana*, 552 U.S. 472, 476-77, 128 S. Ct. 1203, 1207, 170 L. Ed. 2d 175 (2008); *Young v. State*, 283 S.W.3d 854, 866 (Tex. Crim. App. 2009)). First, the movant must make a prima facie case of racial discrimination. *Mathews*, 2020 Tex. App. LEXIS 7210, at *2 (citing *Snyder*, 552 U.S. at 476, 128 S. Ct. at 1207; *Watkins v. State*, 245 S.W.3d 444, 447 (Tex. Crim. App. 2008)). Once a prima facie showing has been made, the burden of production shifts to the nonmovant to articulate a race-neutral reason for its strike. *Mathews*, 2020 Tex. App. LEXIS 7210, at *2 (citing *Snyder*, 552 U.S. at 476-77, 128 S. Ct. at 1207; *Watkins*, 245 S.W.3d at 447). Lastly, if the nonmovant provides a race-neutral explanation, the trial court must decide whether the movant has satisfied its burden of persuasion to prove

purposeful racial discrimination. *Mathews*, 2020 Tex. App. LEXIS 7210, at *2 (citations omitted). To satisfy this burden, the movant must prove by a preponderance of the evidence that the allegations of purposeful discrimination were true in fact and that the race-neutral reasons proffered were merely a sham or pretext. *Id.* (citation omitted).

On appeal, a trial court's ruling on the issue of discriminatory intent must be sustained unless it is clearly erroneous. *Id.* (citations omitted). Appellate courts must give great deference to credibility and demeanor determinations made by the trial court in connection with a *Batson* inquiry. *Mathews*, 2020 Tex. App. LEXIS 7210, at *2 (citing *Snyder*, 552 U.S. at 477). As the Court of Criminal Appeals has explained, "a reviewing court should examine a trial court's conclusion that a facially race-neutral explanation for a peremptory challenge is genuine, rather than a pretext, with great deference, reversing only when that conclusion is, in view of the record as a whole, clearly erroneous." *Mathews*, 2020 Tex. App. LEXIS 7210, at *3 (citing *Watkins*, 245 S.W.3d at 448).

In the matter before us, Appellant challenged the State's use of a peremptory strike against juror number 15, the only African-American who would have been seated on the jury. Appellant is also African-American. Appellant requested and received a *Batson* hearing concerning this strike. During that hearing, the State told the court it struck the juror "because she informed us that she had been convicted of two occasions of assault and two criminal trespasses." Further, the prosecutor noted, he knew "personally she is the sister of a person . . . who had a number of criminal cases on him and sent him to prison previously[.]" Counsel for Appellant did not ask any questions or offer any rebuttal evidence. The trial court overruled Appellant's *Batson* challenge.

The existence of a prior arrest or criminal history can be a race-neutral explanation for a peremptory strike. *Dennis v. State*, 151 S.W.3d 745, 750 (Tex. App.—Amarillo 2004, pet. ref'd) (citing *Harris v. State*, 990 S.W.2d 232, 235-36 (Tex. App.—Houston 1999, no pet.)). And, the State's additional reason concerning juror number 15's relation to a person with a number of cases for which the prosecutor had previously sent the accused to prison constitutes a second race-neutral explanation.

Appellant has the burden to prove discrimination or pretext. Here, Appellant argued at trial only that the State exercised a peremptory strike against the one African-American who would sit on the jury and Appellant is also African-American. On appeal, Appellant argues only that "[t]his court should analyze these reasons to determine whether they are 'inherently' a pretext to keep the only African-American off of this jury and upon a determination that it was[,] the judgment in this case should be reversed and a new trial granted to Appellant." Appellant did not question the prosecutor at all during the *Baston* challenge at trial and certainly did not inquire whether the prosecutor struck juror number 15 for any other reason. Appellant offers no analysis on appeal. The State is not required to disprove an allegation of discrimination or pretext—it is Appellant's burden alone. Here, Appellant failed to carry his burden as he has presented no evidence showing the prosecutor exercised a peremptory strike against juror number 15 simply because of her race. *See Dennis*, 151 S.W.3d at 750. Accordingly, we have no basis on which to find the trial court's ruling clearly erroneous, and we resolve Appellant's final issue against him.

CONCLUSION

Having overruled each of Appellant's issues against him, we affirm the judgment of the trial court.

Patrick A. Pirtle
Justice

Do not publish.