



**In The
Court of Appeals
Sixth Appellate District of Texas at Texarkana**

No. 06-09-00048-CR

STEPHANIE LESTER, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the Sixth Judicial District Court
Lamar County, Texas
Trial Court No. 22836

Before Morriss, C.J., Carter and Moseley, JJ.
Memorandum Opinion by Chief Justice Morriss

MEMORANDUM OPINION

In a Lamar County jury trial, Stephanie Lester was convicted of aggravated assault with the use of a deadly weapon.¹ Lester urges on appeal that the evidence is legally and factually insufficient to support the conviction, because there is insufficient evidence to support a finding that the knife used was a deadly weapon.

The State agrees that the evidence is factually insufficient to prove that the knife was a deadly weapon. Lester and the State have jointly asked, based on this reversible error, that we reverse the conviction and remand the case for a new trial.

Here, not only have the parties agreed that reversible error exists, the record readily demonstrates the factual, but not the legal, insufficiency of the evidence to establish that the weapon

¹Lester was sentenced to four years' confinement and a \$2,000.00 fine.

Lester used was a deadly weapon. Thus, we grant the joint motion, reverse Lester's conviction, and remand the case for further proceedings.²

Josh R. Morriss, III
Chief Justice

Date Submitted: November 5, 2009
Date Decided: November 6, 2009

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²Rule 39.8 of the Texas Rules of Appellate Procedure requires that the clerk of this Court provide the parties at least twenty-one days' notice before argument or submission of a case without argument. TEX. R. APP. P. 39.8. To expedite a decision, Rule 2 of the same rules authorizes a court on its own initiative to suspend the operation of a rule in a particular case. TEX. R. APP. P. 2. By their joint motion, the parties seek immediate appellate relief. On our own initiative, we apply Rule 2 and submit the case without the notice set out by Rule 39.8.