

**TEXAS COURT OF APPEALS, THIRD DISTRICT, AT AUSTIN**

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**NO. 03-16-00096-CV**

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**In the Matter of J. E. C.**

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**FROM THE DISTRICT COURT OF TRAVIS COUNTY, 98TH JUDICIAL DISTRICT  
NO. JV35570, HONORABLE RHONDA HURLEY, JUDGE PRESIDING**

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**MEMORANDUM OPINION**

J.E.C. was adjudicated delinquent by the district court, sitting as a juvenile court, for committing the offense of aggravated assault with a deadly weapon. *See* Tex. Penal Code § 22.02(a)(2); Tex. Fam. Code § 51.03(a)(1). The court placed J.E.C. on probation for one year at home in the custody of her mother. *See* Tex. Fam. Code § 54.04(d)(1)(A). On appeal, J.E.C. challenges the sufficiency of the evidence supporting the court’s finding that she used a deadly weapon—i.e., her hands and feet—during the commission of the offense. We will affirm the judgment of delinquency.

**BACKGROUND**

Fifteen-year-old J.E.C. engaged in a physical fight with D.A., a classmate who lived in the same apartment complex, and J.E.C. was adjudicated delinquent. At the adjudication hearing, the court heard testimony from three witnesses: a detective who investigated the incident, a probation officer who provided J.E.C.’s date of birth, and D.A.

D.A. testified that on the evening of the fight, she was watching television in her family's apartment when a neighbor knocked on her door and told her that J.E.C. wanted to talk to her. D.A. stated that she went to the courtyard area in front of her first-floor apartment where she saw J.E.C. walking toward her with several other people, some of whom were videotaping the event.<sup>1</sup> D.A. testified that J.E.C. said someone told her that D.A. "was talking about [J.E.C.]" and that "to get this over with we had to fight," and "it was going to be, you know, one round." According to D.A., J.E.C. said her little brother told her about D.A. asking him whether J.E.C. had gone swimming with D.A.'s boyfriend. D.A. acknowledged that this was not her first fight, that she was upset and yelling, and that she said, "Whatever. I'm not going to let nobody hit me." D.A. testified that J.E.C. threw the first punch, D.A. "responded back," and they fought for two or three minutes.

D.A. stated that during the fight, J.E.C. hit D.A. with her fist, took D.A. to the ground, and sat on top of D.A.'s chest while punching her. D.A. testified that she was five or six inches shorter than J.E.C. and acknowledged that she was "at a great disadvantage" in the fight. D.A. recalled asking J.E.C. to let her go and said that other people yelled at J.E.C. to get off of D.A. but that J.E.C. ignored them. D.A. stated that eventually, someone said that they were going to call the police and that someone came and took J.E.C. off of her. D.A. testified that as J.E.C. got up, she stomped on D.A.'s face two or three times with her shoes, and that D.A. lost consciousness. When D.A. regained consciousness, her friend A.R., who witnessed the fight, was there to help her up.

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<sup>1</sup> No videotape was offered or admitted into evidence at the hearing.

After the fight, police responded to the scene, and D.A. went to North Austin Medical Center. D.A. testified that she was released after receiving treatment for pain and swelling and that she was advised against sleeping because she could have a concussion. Two days later, D.A. went to Dell Children's Hospital because her neck felt "sore" and "too heavy." Records from Dell Children's Hospital admitted into evidence show that D.A. was diagnosed with "Acute cervical myofascial strain; Brain concussion; Chest wall contusion; Closed fracture nasal bone; [and] Facial contusion."<sup>2</sup> Those records attributed D.A.'s injuries to an assault and stated that she complained of face, neck, and back pain. Photographs of D.A.'s face were admitted into evidence showing her black eyes, bruises, and nose injury. D.A. testified that the injuries depicted in the photos resulted from the fight.

D.A. acknowledged contacting an attorney before speaking with the police, but she denied "making this story up because of some lawsuit." When asked if J.E.C. was trying to kill her, D.A. testified that she did not know why the fight occurred and that there was no reason for it.

Austin Police Department detective Nicole Gray testified that four days after the fight, D.A.'s mother and D.A. came to speak with her. Detective Gray stated that she opened an investigation into D.A.'s case, requested her records from Dell Children's Hospital, and reviewed the responding police officer's offense report. Because the medical records indicated that D.A. sustained a broken nose and a concussion with loss of consciousness, Detective Gray decided to charge the offense initially as an aggravated assault with bodily injury. Detective Gray testified that

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<sup>2</sup> No records from North Austin Medical Center were offered or admitted into evidence at the hearing.

based on her training and experience as an APD officer, hands and feet can be used as deadly weapons. She acknowledged that she did not see the girls' fight and did not speak with J.E.C. as part of the investigation.

At the conclusion of the trial, the juvenile court adjudicated J.E.C. delinquent for committing aggravated assault with a deadly weapon. The court found specifically that J.E.C. caused bodily injury to D.A. and that J.E.C. used her hands and feet as a deadly weapon. The court signed a judgment of delinquency and a dispositional order of probation, placing J.E.C. on probation for one year at home in the custody of her mother.

### **Sufficiency of the evidence**

On appeal, J.E.C. contends that the evidence was legally insufficient to prove that her hands and feet were used as deadly weapons. Adjudications of delinquency in juvenile cases are based on the criminal standard of proof. *See* Tex. Fam. Code § 54.03(f). We review adjudications of delinquency in juvenile cases by applying the same standards applicable to evidentiary sufficiency challenges in criminal cases. *See In re M.C.L.*, 110 S.W.3d 591, 594 (Tex. App.—Austin 2003, no pet.); *see also In re R.J.*, No. 03-14-00389-CV, 2015 Tex. App. LEXIS 11533, at \*13 (Tex. App.—Austin Nov. 6, 2015, no pet.) (mem. op.). We consider all of the evidence in the light most favorable to the verdict and determine whether any rational trier of fact could have found the elements of the offense beyond a reasonable doubt. *See In re M.C.L.*, 110 S.W.3d at 594 (citing *Jackson v. Virginia*, 443 U.S. 307, 319 (1979)). The trier of fact is the sole judge of the weight and credibility of witness testimony, and thus, on appeal we must give deference to the fact finder's determinations. *In re M.L.M.*, 459 S.W.3d 120, 126 (Tex. App.—El Paso 2015, no pet.) (citing

*Brooks v. State*, 323 S.W.3d 893, 899 (Tex. Crim. App. 2010)). If the record contains conflicting facts, we must presume that the fact finder resolved those facts in favor of the verdict and defer to that resolution. *Id.* (citing *Clayton v. State*, 235 S.W.3d 772, 778 (Tex. Crim. App. 2007)). On appeal, we ensure that the fact finder reached a rational verdict, and we may not reevaluate the weight and credibility of the evidence produced at trial and in so doing substitute our judgment for that of the fact finder. *Id.* (citing *King v. State*, 29 S.W.3d 556, 562 (Tex. Crim. App. 2000)).

Use of a deadly weapon was an element of the offense of aggravated assault as alleged in the State’s petition. *See* Tex. Penal Code § 22.02(a)(2). A “deadly weapon” under the relevant section of the Penal Code includes “anything that in the manner of its use or intended use is capable of causing death or serious bodily injury.” *Id.* § 1.07(a)(17)(B). “Serious bodily injury” is defined as “bodily injury that creates 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.” *Id.* § 1.07(a)(46). The deadly-weapon statute does not require that an actor intend death or serious bodily injury; rather, “an object is a deadly weapon if the actor intends a use of the object in which it would be capable of causing death or serious bodily injury.” *McCain v. State*, 22 S.W.3d 497, 503 (Tex. Crim. App. 2000) (“The placement of the word ‘capable’ in the provision enables the statute to cover conduct that threatens deadly force, even if the actor has no intention of actually using deadly force.”). The Texas Court of Criminal Appeals has recognized that hands and feet can be deadly weapons in the manner of their use, depending on the evidence shown. *Lane v. State*, 151 S.W.3d 188, 191 (Tex. Crim. App. 2004) (citing *Turner v. State*, 664 S.W.2d 86, 90 (Tex. Crim. App. 1983)).

### **Factors in deadly-weapon determination**

In determining whether a hand or a foot was used as a deadly weapon, courts may consider any injuries inflicted on the victim. *Id.* Other factors that may be considered in determining whether an object is a deadly weapon include: (1) the physical proximity between the victim and the object; (2) the threats or words used by the assailant; (3) the size and shape of the weapon; (4) the weapon's ability to inflict death or serious injury; and (5) the manner in which the defendant used the weapon. *In re S.B.*, 117 S.W.3d 443, 446 (Tex. App.—Fort Worth 2003, no pet.); *see also In re B.P.S.*, No. 03-07-00284-CV, 2008 Tex. App. LEXIS 6028, at \*21 (Tex. App.—Austin Aug. 6, 2008, no pet.) (mem. op.). No one factor is determinative, and the reviewing court must examine each case on its own facts to determine whether the fact finder could have concluded from the surrounding circumstances that the object used was a deadly weapon. *See In re B.P.S.*, 2008 Tex. App. LEXIS 6028, at \*2 (citing *Brown v. State*, 716 S.W.2d 939, 947 (Tex. Crim. App. 1986)); *In re S.B.*, 117 S.W.3d at 447).

These factors, applied to the evidence in this record, support the court's judgment. As to the factor concerning the injuries inflicted on the victim, medical records and photographs in evidence showed that D.A. sustained numerous severe injuries from the assault, including acute cervical myofascial strain, a brain concussion, a chest wall contusion, a closed fracture of the nasal bone, and facial contusions. *See Lane*, 151 S.W.3d at 191. J.E.C. points out that D.A. did not testify where on her body J.E.C. punched her. However, the injuries documented in the medical records and photographs correlate with D.A.'s testimony that J.E.C. used her hand in a fist to punch D.A. while sitting on her chest, and that J.E.C. used her foot to stomp on D.A.'s face.

As to the physical-proximity factor, the court could have reasonably inferred that there was close physical proximity between D.A. and J.E.C.'s hand and foot based on D.A.'s testimony that J.E.C. sat on top of her chest while punching her and that J.E.C. stomped on D.A.'s face as J.E.C. was getting up from the ground. *See In re S.B.*, 117 S.W.3d at 446.

Regarding the factor of the assailant's threats or words, the court heard D.A.'s testimony that J.E.C. said they had to fight "one round" and "to get this over with." *See id.* From this testimony, the court could have inferred that J.E.C. was seeking not only an argument, but intended to physically harm D.A. in a "one round" fight as a consequence for her statements.

Concerning the next factor—the size and shape of the weapon—J.E.C. notes that there was no evidence about the size or shape of her hands or feet or the shoes she wore during the fight. However, the court could have reasonably inferred from the girls' difference in height that J.E.C. had bigger hands and feet than D.A., who acknowledged being "at a great disadvantage" in the fight. *See id.* Additionally, the court heard D.A. testify in some detail about how J.E.C. used her fist to repeatedly punch D.A. while she was pinned to the ground and how J.E.C. used her foot to stomp on D.A.'s face two or three times as J.E.C. got up. In a similar case of aggravated assault, the Dallas Court of Appeals held that a victim's failure to specifically describe or produce a weapon did not preclude a deadly-weapon finding when the manner of the weapon's use was detailed. *Kistner v. State*, No. 05-94-00949-CR, 1996 Tex. App. LEXIS 5239, at \*8 (Tex. App.—Dallas 1996, pet. ref'd) (not designated for publication) (affirming finding that defendant's foot or shoe was deadly weapon where victim testified that defendant kicked her head several times, that he was wearing shoes, and that he kicked her as hard as he could).

As to the next factor, the weapon's ability to inflict death or serious injury, the court could have reasonably found that J.E.C.'s hand and foot were capable of causing death or serious injury based on the severity of the physical harm to D.A., which included a fractured nose and concussion. *See In re S.B.*, 117 S.W.3d at 446; *see also Drichas v. State*, 175 S.W.3d 795, 799 (Tex. Crim. App. 2005) (concluding that object's "[c]apability [as deadly weapon] is evaluated based on the circumstances that existed at the time of the offense"). Further, the court could have credited Detective Gray's testimony that, based on her training and experience as an APD officer, hands and feet could be used as deadly weapons.

Finally, as to the last factor, the manner in which the defendant used the weapon, the court could have considered that the way J.E.C. used her hand—i.e., in a fist to repeatedly punch D.A., who was pinned to the ground while J.E.C. sat on her chest—and the way J.E.C. used her foot—i.e., by stomping on D.A.'s face multiple times as J.E.C. got up—were methods capable of causing even greater harm to D.A. than they did. *See In re S.B.*, 117 S.W.3d at 446; *see also In re J.A.B.*, No. 03-09-00184-CV, 2010 Tex. App. LEXIS 3625, at \*4 (Tex. App.—Austin May 13, 2010, no pet.) (mem. op.) (affirming deadly-weapon finding against juvenile who stabbed victim's neck with pocketknife, noting that victim's wound could have been serious given its location).

Viewed in the light most favorable to the verdict, the evidence is sufficient to support the juvenile court's conclusion beyond a reasonable doubt that J.E.C. used her hands and feet as deadly weapons during her commission of the offense underlying the court's adjudication of her delinquency.



## **CONCLUSION**

We affirm the juvenile court's judgment of delinquency.

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Jeff Rose, Chief Justice

Before Chief Justice Rose, Justices Goodwin and Bourland

Affirmed

Filed: December 20, 2017