
YEAR 2006 CASE SUMMARIES

By
The Honorable Pat Garza

Associate Judge
386th District Court
San Antonio, Texas

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Evidence was sufficient to establish knife as a deadly weapon. [In the Matter of R.S.](06-4-5)

On September 6, 2006, the San Antonio Court of Appeals held that to establish a knife as deadly weapon, State is required to show some evidence of the knife's size, sharpness, brandishing motion by the accused, or testimony regarding the victim's fear of serious bodily injury or death.

¶ 06-4-5. **In the Matter of R.S.**, MEMORANDUM, No. 04-05-00819-CV, 2006 Tex.App.Lexis 7945 (Tex.App.— San Antonio, 9/6/06).

Facts: On July 8, 2005, around 2:00 a.m., Danny Sevilla was leaving work at the Rialto theaters. Sevilla was walking through the parking lot to his vehicle when he noticed someone sitting in the parking lot. Sevilla was on his cellphone when this person, R.S., walked up behind him. As Sevilla turned around, R.S. demanded Sevilla's keys to his vehicle.

During this encounter, R.S. brandished a small green pocketknife. Sevilla complied with R.S.'s demands, and he even assisted R.S. in learning about the keyless entry. R.S. stated that he would not harm him for cooperating and then left in the vehicle. Sevilla subsequently called the police. At the scene, Officer William Kasberg conducted an investigation and took a statement from Sevilla regarding R.S.'s appearance and the details of the encounter.

Approximately a week later, R.S. took his girlfriend to Rivercenter Mall in the stolen vehicle; however, R.S. was unable to pay the parking fee when he attempted to leave. Due to R.S.'s inability to provide identification or payment, the parking attendant contacted security, who ultimately called the San Antonio Police Department (SAPD). Officer George Morales ran a license plate check which revealed that the vehicle had been stolen; thus, R.S. was arrested for the unauthorized operation of a motor vehicle. An investigating officer of the initial robbery created a photo lineup with six individuals, and Sevilla positively identified R.S. as the person who robbed him.

At trial Sevilla testified about the event that took place that night as well as the fear R.S. inflicted in him that evening. Several officers and the parking attendants testified about R.S.'s arrest and the numerous lies R.S. stated regarding the ownership of the vehicle and his age. Ultimately, the jury found that R.S. engaged in delinquent conduct, specifically, aggravated robbery.

The disposition proceeding was conducted immediately after the trial on the merits. At the disposition hearing the State called Landon Cross, R.S.'s juvenile probation officer. Due to R.S.'s criminal history, unstable family structure, and the seriousness of the offense, Cross and the probation staff recommended R.S. be committed to TYC. The jury agreed with the recommendation and returned a determinate

sentence of fifteen years.

Held: Affirmed

Memorandum Opinion: LEGAL SUFFICIENCY

To review a legal sufficiency challenge, this court shall "view the relevant evidence in the light most favorable to the verdict and determine whether any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *Johnson v. State*, 23 S.W.3d 1, 7 (Tex. Crim. App. 2000). When conducting a legal sufficiency review, an appellate court does not review the fact finder's weighing of the evidence. *Clewis v. State*, 922 S.W.2d 126, 134 (Tex. Crim. App. 1996).

In his third issue, R.S. complains that the evidence cannot support the conviction of aggravated robbery because there is no evidence showing R.S. used or exhibited a "deadly" weapon. n2 R.S. contends that *Blain v. State*, 647 S.W.2d 293 (Tex. Crim. App. 1983), is consistent with his argument. In *Blain*, the court held that the evidence was insufficient to show that a table knife was a deadly weapon. *Id.* at 294. Because a knife is not a deadly weapon per se, the court determined that the State was required to show some evidence of the knife's size, sharpness, brandishing motion by the accused, or testimony regarding the victim's fear of serious bodily injury or death. *Id.*

n2 Aggravated robbery is committed "if, in the course of committing theft... and with intent to obtain or maintain control of the property, [a person]... intentionally or knowingly threatens or places another in fear of imminent bodily injury or death... and [said person]... uses or exhibits a deadly weapon" *TEX. PEN. CODE ANN. § § 29.02(a), 29.03(a)(2)* (Vernon 2003).

Unlike *Blain*, the State provided evidence regarding the knife's physical characteristics, the brandishing motions made by R.S., and the testimony concerning Sevilla's fear of serious injury or death. An officer's report documented Sevilla's description of the "small, green hunting knife with many relatively small teeth." Not only did the officer testify that such a knife is capable of causing death, Sevilla testified numerous times concerning his fear of being stabbed, feeling "terrified," and worrying about his parents "los[ing] their son." Furthermore, evidence was provided which documented the manner in which R.S. brandished the knife while cursing at Sevilla and demanding his car keys. *See McCain v. State*, 22 S.W.3d 497, 503 (Tex. Crim. App. 2000) (concluding that merely carrying a butcher knife during an attack was legally sufficient to support a finding that the knife was a deadly weapon). A rational trier of fact could have found beyond a reasonable doubt that R.S. committed aggravated robbery.

Other Issues Omitted by Editor.

Conclusion: Each of R.S.'s arguments are overruled; thus, the trial court's judgment is affirmed.