Affirmed and Opinion filed September 16, 1999.

In The

Fourteenth Court of Appeals

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NO. 14-98-00697-CV

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IN THE MATTER OF B.I., Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the County Court at Law No. 1 and Probate Court
Brazoria County, Texas
Trial Court Cause No. 5937M

O P I N I O N

On November 7, 1997, the State filed a petition alleging that appellant, B.I., engaged in delinquent conduct by committing the offense of aggravated assault. *See* TEX. PEN. CODE ANN. § 22.02 (Vernon Supp. 1999). A bench trial was held and appellant was adjudicated a child who engaged in delinquent conduct. Appellant challenges the trial court's ruling in two points of error. We affirm.

Background

On July 29, 1997, Jamie Evans learned that appellant had struck her younger brother in the head with a rock. Evans went to appellant's home to confront him about the incident and they exchanged words. Appellant then told his brother to get his baseball bat, and appellant struck Evans twice with the bat. Appellant's mother intervened and Evans ran home. Evans was subsequently taken to the hospital for a physical examination and was given pain medication and told to watch for swelling. She sustained bruises that lasted for several weeks.

Discussion

In his first point of error, appellant asserts the evidence was legally and factually insufficient to support the trial court's ruling adjudicating him a child who had engaged in delinquent conduct by committing the offense of aggravated assault.

In reviewing the sufficiency of the evidence in a juvenile case, this Court has adopted a standard which requires us to "view the evidence as a whole to determine whether the State met its burden of proof beyond a reasonable doubt." *In the Matter of G.M.P.*, 909 S.W.2d 198, 202 (Tex. App.—Houston [14th Dist.] 1995, no writ); *see also In re M.R.*, 846 S.W.2d 97, 101 (Tex. App.—Fort Worth 1992, writ denied); *In re S.D.W.*, 811 S.W.2d 739, 749 (Tex. App.—Houston [1st Dist.] 1991, no writ). Resolving conflicts and contradictions in the evidence is left for the trier of fact. *See Matter of G.M.P.*, 909 S.W.2d at 203. The jury is the sole judge of the credibility of witnesses and the weight to be given their testimony. *See id.* The jury is free to believe some witnesses and refuse to believe others, and it may accept some portions of testimony and reject other portions. *See id.* Therefore, as the reviewing court, our role is not to act as a thirteenth juror reevaluating the weight and credibility of the evidence, but act only to ensure the jury reached a rational decision. *See id.*

Appellant contends the State failed to prove a baseball bat is a deadly weapon. Section 1.07(17) of the Texas Penal Code defines a deadly weapon as follows:

> (A) a firearm or anything manifestly designed, made, or adapted for the purpose of inflicting death or serious bodily injury; or
>
> (B) anything that in the manner of its use or intended use is capable of causing death or serious bodily injury.

TEX. PEN. CODE ANN. § 1.07(17) (Vernon Supp. 1999). While most courts have recognized that a baseball bat is not a deadly weapon per se, they have concluded that death or serious bodily injury can be inflicted by a baseball bat. *See Hammons v. State*, 856 S.W.2d 797, 801 (Tex. App.—Fort Worth 1993, pet. ref'd); *Fugett v. State*, 855 S.W.2d 227, 229 (Tex. App.—Fort Worth 1993, no pet.); *Hughes v. State*, 739 S.W.2d 458, 459 (Tex. App.—San Antonio 1987, no pet.). An object can qualify as a deadly weapon through the manner of its use or intended use, its size, shape, and its capacity to produce death or serious bodily injury. *See Denham v. State*, 574 S.W.2d 129, 130 (Tex. Crim. App. 1978). The State presented the expert testimony of Harry Hunt, a district attorney investigator. Hunt testified that he had investigated assault cases and was familiar with the types of wounds inflicted by baseball bats. He stated that a baseball bat can cause serious bodily injury or death. In light of the cases recognizing that a bat is capable of inflicting serious bodily injury and the expert witness testimony presented by the State, we conclude the evidence was legally and factually sufficient to support the trial court's finding that the baseball bat used by appellant was a deadly weapon.

Appellant also argues that the bat is not a deadly weapon because the injuries that Evans sustained do not constitute serious bodily injury as required by the statutory provision defining aggravated assault. Section 22.02 of the Texas Penal Code defines aggravated assault and provides, in pertinent part:

> (a) A person commits an offense if the person commits assault as defined in Section 22.01 and the person:
>
> > (1) causes serious bodily injury to another, including the person's spouse; *or*
> >
> > (2) uses or exhibits a deadly weapon during the commission of the assault.

TEX. PEN. CODE ANN. § 22.02 (Vernon Supp. 1999) (emphasis added). What appellant fails to note is that the definition of aggravated assault is disjunctive. In other words, a person commits aggravated assault if he *either* causes serious bodily injury to another, or the other's spouse, *or* uses or exhibits a deadly weapon during the commission of the assault. Thus, because we found the evidence sufficient to establish that appellant used a deadly weapon during his assault of Evans, it is not necessary that Evans sustained serious bodily injury. The requirements of section 22.02 have been met. The trial court did not err in adjudicating appellant a child who engaged in delinquent conduct by committing the offense of aggravated assault. We overrule appellant's first point of error.

In his second point of error, appellant contends the trial court abused its discretion by denying appellant full cross-examination of Evans and impeachment of her through other testimony.

Appellant raises five separate contentions under his second point of error and cites only one case in support of these subpoints. In doing so, appellant raises a multifarious point of error and presents nothing for review. *See Dunn v. State*, 951 S.W.2d 478, 480 (Tex. Crim. App. 1997) (finding points that are multifarious and inadequately briefed present nothing for review); *Saldivar v. State*, 980 S.W.2d 475, 487 n.3 (Tex. App.—Houston [14th Dist.] 1998, pet. filed). We consequently overrule appellant's second point of error.

Accordingly, the judgment of the trial court is affirmed.

/s/ Paul C. Murphy
Chief Justice

Judgment rendered and Opinion filed September 16, 1999.

Panel consists of Chief Justice Murphy and Justices Yates and Hudson.

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