No. 1-24-00522-CR

In The Court of Appeals
First District of Texas
At Houston

ALEXAS FARAGOZA,
Appellant,

v.

THE STATE OF TEXAS,
Appellee.

On Appeal from Cause No. 99105-CR
In the 149th Judicial District Court of Brazoria County, Texas
The Honorable Jessica Pulcher, Presiding

APPELLANT'S OPENING BRIEF ON THE MERITS

ORAL ARGUMENT REQUESTED

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IDENTITY OF PARTIES AND COUNSEL

Pursuant to TEX. R. APP. P. 38.1(a), the following is a complete list of the names of the parties and their counsel.

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STATEMENT OF THE CASE

I. Nature of the Case

This is an appeal from a conviction for injury to a child, with a special finding that a vehicle was used as a deadly weapon during the offense, and the resultant sentence of 13 years' imprisonment in the Institutional Division of the Texas Department of Criminal Justice.

II. Trial Court

The Honorable Jessica Pulcher, Presiding Judge of the 149th Judicial District Court of Brazoria County, Texas.

III. Course of the Proceedings and the Trial Court's Disposition of the Case

Appellant was indicted for one count of injury to a child, in Cause No. 99105-CR, in the 149th Judicial District Court of Brazoria County, Texas. (CR 6)[1]; *see* TEX. PEN. CODE ANN. § 49.08(b). Appellant pleaded guilty and

[1] The record in this case consists of one volume of the Clerk's Record and seven (7) volumes of the Reporter's Record. Throughout this brief, the Clerk's Record is referenced as "CR." The Reporter's Record is referenced as "RR," with the volume of the record preceding the "RR" and the page number of the record following "RR." For example, "3 RR 54" refers to page number 54 of the third volume of the Reporter's Record.

proceeded to a punishment trial. (3 RR 6-7). The jury found Appellant guilty, returned a special finding that a deadly weapon was employed during the offense, and recommended that Appellant be sentenced to thirteen (13) years' imprisonment. (5 RR 317-19; CR 60-63). On June 28, 2024, the district court certified the Appellant's right to appeal and sentenced Appellant to a total of 13 years' imprisonment in the Institutional Division of the Texas Department of Criminal Justice. (6 RR 4; CR 100, CR 73, 76-78). The Appellant's notice of appeal was timely filed the same day. (CR 74); TEX. R. APP. P. 26.2(A)(1). Appellant is serving the sentence imposed at the Lucile Plane State Jail in Dayton, Texas.

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APPELLANT'S OPENING BRIEF ON THE MERITS

TO THE HONORABLE COURT OF APPEALS:

Alexas Faragoza, Appellant in docket number 1-24-00522-CR , submits this Brief on the Merits in support of her appeal and requests that this Court strike that portion of the judgment wherein the trial court found as true that Appellant used or exhibited a deadly weapon and affirm the judgment as modified.

STATEMENT OF FACTS

Appellant in this case was charged with recklessly causing serious bodily injury to a child fourteen (14) years of age or younger, alleged to have occurred on June 24, 2023, in Brazoria County, Texas. (CR 6).

On June 24, 2024, the trial court arraigned Appellant, who entered a plea of guilty to the offense of injury to a child. (2 RR 6). Prior to the commencement of voir dire, Appellant filed her Punishment Election, electing to have the jury assess her punishment in the event of conviction. (CR 37). She also filed Defendant's Application for Community Supervision. (CR 39).

Voir dire then commenced, and a jury was seated. (2 RR 188).

The next day, June 25, 2024, trial commenced. The prosecutor read the indictment in the jury's presence and the Appellant entered a plea of guilty. (3 RR 6-7). The State made an opening statement and the defense reserved their opening. (3 RR 7-14).

The State's first witness was Angleton Police Department Officer Nicolas Saldarriaga. (3 RR 15). Officer Saldarriaga testified that he was

working for the Clute Police Department in June of 2023. (3 RR 15). He further stated that he was working the night shift for the Clute Police Department on June 24, 2023. (3 RR 16). When asked if he knew why he had been called to testify, Officer Saldarriaga stated it was because of his involvement in a vehicle pursuit in the early morning hours of June 24, 2023. (3 RR 17). He testified that he was in the 1000 block of Dixie Drive in Clute, Texas, when he first encountered the vehicle involved in the pursuit. (3 RR 17). He described the vehicle as being a truck, and that he attempted to stop it due to a defective taillight that he had observed. (3 RR 17).

Despite the fact that he activated his emergency lights in an attempt to make the traffic stop, the truck did not pull over, but headed in the direction of Lake Jackson, Texas. (3 RR 17). Officer Saldarriaga testified that he continued to pursue the truck until he observed it crashing into a tree line near the frontage road of State Highway 288 northbound in Lake Jackson.

When asked what he thought caused the crash, Officer Saldarriaga stated that there was a dip on the roadway prior to the entrance ramp to State

Highway 288, which caused the truck to catch "air", lose control, and crash into a tree line. He also stated that he was traveling at a speed of approximately 110 miles per hour at the time the truck wrecked. (3 RR 18).

Upon approaching the wrecked truck, Officer Saldarriaga testified that he observed the vehicle to have extensive damage throughout. He also stated that he did not observe a driver but that he did see a passenger. (3 RR 18). Eventually, he located another rear passenger laid across the exhaust pipes and system where the bed of the truck should have been. Asked to clarify, he stated that the bed of the truck was missing, and that it appeared that the rear passenger had been ejected through the rear windshield. (3 RR 19). The State then introduced State's Exhibit 1, which contained, in part, Officer Saldarriaga's dashcam video showing the pursuit. (3 RR 20-21).

Officer Saldarriaga's bodycam video was also part of State's Exhibit 1 and was played for the jury. On that video, Officer Saldarriaga is seen talking on a phone call during which he indicates that he initially thought that the back passenger was actually the driver, and that he thought she was

deceased. (3 RR 23-24).

Officer Saldarriaga further stated that an accident reconstruction team from Lake Jackson Police Department came to the scene, and that he advised them as to what he observed to assist with their investigation. (3 RR 26).

On cross-examination, Officer Saldarriaga agreed with defense counsel that during the pursuit, it appeared that the driver of the truck might be willing to stop as she pulled into a Chevron gas station, but that she then accelerated as she was pulling out of that location, indicating that her intention was not to stop. (3 RR 27). He was then questioned about Clute Police Department policy concerning vehicle pursuits, (3 RR 28-29). He also testified that he observed the accident. (3 RR 30). When asked what he observed, he testified that the truck "took air", lost control, and hit a tree. (3 RR 30). He also confirmed that his initial belief was that the individual found laying on the exhaust pipes had actually been the driver, and not a rear passenger. (3 RR 30-31). Finally, upon viewing his dashcam, he testified that it appeared that the driver was trying to steer the truck while it was in the air.

(3 RR 34).

The State next called Officer Richard Park of the Clute Police Department. Officer Park testified that on June 24, 2023, he was employed by the Lake Jackson Police Department and was working the night shift. (3 RR 39-40). Officer Park testified that he was sitting in his police vehicle in the parking lot of the Lake Jackson Police Department when he learned from dispatch that the Clute Police Department was pursuing a vehicle that was failing to stop. Realizing that the vehicle was about to pass right by his location, Officer Park joined in the pursuit as the secondary unit. (3 RR 41).

The State offered Officer Park's bodycam video footage of the incident, which was admitted as State's Exhibit 3 and played for the jury. Officer Park testified that he thought the rear passenger, who he initially thought was the driver, was dead. (3 RR 45). He also stated that he was able to speak with the front passenger of the truck, who told him that she had told the driver to slow down and pull over during the pursuit. (3 RR 46).

During cross-examination, Officer Park testified that he was driving "upwards" to ninety (90) miles per hour, and that units in front of him were traveling in excess of one hundred (100) miles per hour. He also testified that during an earlier period in his career when he had worked for the Clute Police Department, its policy was not to pursue vehicles for Class C misdemeanor violations. (3 RR 53). On recross-examination, Officer Park testified that the current Clute Police Department policy allowed pursuits for Class C misdemeanor offenses. (3 RR 56).

The State's next witness was Officer Robert Pruett of the Lake Jackson Police Department. (3 RR 59). Officer Pruett testified that he was working the night shift for the Lake Jackson Police Department on June 24, 2023, when he learned of an active Clute Police Department vehicle pursuit that was coming through Lake Jackson. (3 RR 60). Officer Pruett stated that he did not join the pursuit, and that the accident had already occurred when he arrived on the scene. (3 RR 62).

On cross-examination, Officer Pruett testified that as he was examining the accident scene, he noticed that the cab of the truck appeared to be severely crushed, and that the steering wheel was nearly touching the back of the driver seat. (3 RR 65).

The State next called Olivia Allen, the complainant in this case. (3 RR 69). Ms. Allen testified that she was thirteen (13) years of age on June 24, 2023, and that she was currently attending the eighth (8th) grade in school. With respect to her activities in the day immediately following the accident, Ms. Allen stated that she had gone to Houston in the truck which would later be involved in the accident. She said the driver of the vehicle was "Caleb", and that there was a passenger named "Bri". (3 RR 70). She also testified that Caleb and Bri bought her an alcoholic beverage, which she drank on the return trip to Houston. (3 RR 70-71).

Later that day, Ms. Allen testified that she went to a party at the Monaco Villas apartments in Lake Jackson. She stated that she rode to the party in the truck with Bri and Caleb. She stated that she "got high," was

drinking, and that "we were doing it all" at the party. She also stated that at some point during the party, she became aware that Bri and "Lexi" were going to the store. She identified "Lexi" as being the Appellant, Alexas Faragoza. (3 RR 73).

Ms. Allen testified that she told Bri and Appellant that she wanted to go to the store with them, but they told her no and to stay at the party. Ms. Allen stated that she began crying, at which point Bri told her that she could go with them to the store. (3 RR 74).

Ms. Allen stated that as they were driving to the store, police pulled in behind the vehicle, at which time Appellant, who she identified as the driver, "took off". She described Appellant as driving "really fast", and stated that she and Bri kept telling her to stop the car. (3 RR 75). She also testified that Bri grabbed the steering wheel 'kind of a little bit." She testified that Appellant never stopped. When asked if the wreck was caused by Bri, the front seat passenger, grabbing the steering wheel, Ms. Allen testified that she didn't know. (3 RR 76).

As for the accident, she testified that she blacked out before impact, and that the next thing she remembered was waking up in the hospital. (3 RR 76-77). She described being in a coma for several days, being hospitalized for approximately two and a half (2 ½) to three (3) months, and having undergone sixteen or seventeen (16 or 17) surgeries. (3 RR 77).

On cross-examination, Ms. Allen testified that she was sure that she remembered the front seat passenger grabbing the steering wheel. She also stated that she was not wearing her seat belt. (3 RR 89).

Next called to testify on behalf of the State was Charles S. Cox, M.D. (3 RR 106). Dr. Cox testified that he was a pediatric surgeon at Memorial Hermann Houston hospital and that he had been practicing since 1988. He also testified that he had treated Ms. Allen since the day she arrived at the hospital and that he had a good working knowledge of her case. He stated that she suffered fourth degree burns to her back, shoulder area, and arm. (3 RR 108). He also testified that she suffered severe traumatic brain injury. (3 RR 111). He further testified that she had undergone anywhere from ten (10)

to twenty (20) operations of varying levels of intensity. (3 RR 117).

The State then called Angelie Vaughn (3 RR 180). Ms. Vaughn testified that she saw Appellant drinking at the party at the Monaco Villas apartments, but she didn't know if Appellant had been using drugs. (3 RR 182-183).

The State began the following trial day by calling Detective Nancy Mezzino of the Clute Police Department. (4 RR 6). Detective Mezzino testified that she was ultimately able to identify Appellant as the suspect driver through interviewing witnesses that had been in the truck with her. (4 RR 9).

Also recalled for cross-examination by the defense that day was Angelie Vaughn. (4 RR 48). Ms. Vaughn testified that on the day of the accident, she saw Appellant drink two (2) or three (3) cups of wine, and that she was intoxicated. (4 RR 49). When it was suggested by counsel for Appellant that she couldn't say with certainty that she was intoxicated, Ms. Vaughn admitted that she didn't have "physical Breathalyzer proof." (4 RR 50). She was also questioned about a written statement she gave to police about the accident. (4 RR 54). When asked if it was true that she had not said

anything about anyone drinking in her written statement, Ms. Vaughn testified that she could not remember. (4 RR 55-56).

Following Ms. Vaughn, the State called Briana Betancur. (4 RR 65). Ms. Betancur stated that she went by "Bri", and that she was in the truck on the day of the accident. (4 RR 66). She stated in the night leading up to the accident, she was with Appellant, Ms. Allen, Ms. Vaughn, and her "guy friend" named Caleb. (4 RR 67). Ms. Betancur testified that she drank one (1) beer, and that she saw Appellant drink two (2) cups of wine. She also stated that she saw Appellant smoking marijuana. (4 RR 68).

Ms. Betancur testified that she was twenty-five (25) years of age when the accident happened. (4 RR 69). She stated that she left the party to go to the store and that Appellant was driving. She testified that she was seated in the front passenger seat, and that Ms. Allen was in the back. She stated that she was wearing her seat belt, but she couldn't remember if Appellant or Ms. Allen were wearing theirs. (4 RR 70).

She further testified that Appellant took off on a high speed chase after she saw a police officer. She stated that she told Appellant to pull over, who stated in response that she had warrants. She also stated that Appellant acted like she was going to stop, but the accident ended up happening. (4 RR 71-72).

Ms. Betancur testified that she was knocked unconscious after the accident occurred. (4 RR 72). She also stated she was discharged from the hospital after about a day and a half.

On cross-examination, Ms. Betancur testified that the owner of the truck was named Caleb Hall. (4 RR 85). She also denied that she grabbed the steering wheel. (4 RR 88).

After calling Appellant's boyfriend, the State rested on June 27, 2024.

After waiving opening, defense counsel called Appellant. (5 RR 44). Ms. Faragoza admitted that she was driving the truck at the time of the accident, and that it belonged to Caleb Hall. (5 RR 62). She also testified that she was driving because everyone else was drunk and she was the only sober one. She stated that Caleb wanted them to go to the store for him and that is why she

was going somewhere in his truck. Ms. Faragoza stated that Mr. Hall was not driving because he was drunk, and because his drivers license was suspended. (5 RR 63). She also testified that Mr. Hall asked her to drive because she was the only sober one. She stated that she drank one glass of wine the night of the accident and that she was not intoxicated. (5 RR 64).

As for why Ms. Allen was in the vehicle, Appellant testified that she (Ms. Allen) had been seen in bed with Mr. Hall, who was twenty-six (26) years of age, and that she and the others did not want that to occur. (5 RR 64-65). She also testified that she realized that there was a police officer who wanted to stop her shortly before she pulled into the Chevron store. She then "freaked out" and panicked, and took off. She did admit to seeing the police lights. (5 RR 66). Appellant explained that she didn't stop because she knew she had a warrant and she was afraid of going to jail. (5 RR 67). She also testified that she was trying to slow down, but the truck would not do so. (5 RR 68). Additionally, she stated that she didn't know how fast she was going. (5 RR 69). She also testified that she felt a tug on the steering wheel, after

which the vehicle went sideways. (5 RR 70).

And she stated that she did not know how she went from the drivers seat to outside the vehicle, and assumed she was ejected. (5 RR 74).

On cross-examination, Appellant admitted that she didn't have a drivers license. (5 RR 97). After calling Brazoria County adult probation officer Laurel Letourneau, the defense rested. (5 RR 254).

Following the closing arguments of counsel, the jury retired to deliberate, after which it returned a guilty of verdict, as instructed by the court, (CR 52, 60) (5 RR 260, 318), and assessed Appellant's punishment at thirteen (13) years confinement in the Texas Department of Criminal Justice - Institutional Division. (5 RR 318) (CR 61). The jury also answered "yes" in response to the deadly weapon Special Issue. (5 RR 318) (CR 63).

Appellant filed Defendant's notice of Appeal on June 28, 2024. (CR 74).

SUMMARY OF THE ARGUMENT

Appellant did not use or exhibit the motor vehicle she was driving as a "deadly weapon" during the commission of the charged offense. Although evidence was presented that Appellant drove in an apparently reckless manner, there was insufficient evidence to establish that she used or exhibited the motor vehicle as a "deadly weapon" at the time of the offense. Reasonable doubt necessarily arose from: (1) the lack of such evidence and (2) trial evidence demonstrating that she lacked control over the motor vehicle and could neither use nor exhibit it to the extent necessary to support a "deadly weapon" finding, at the time of the offense.

ARGUMENT

I. The Evidence Is Legally Insufficient for the Trier of Fact to Make an Affirmative Finding That Appellant's Motor Vehicle Was Used as a Deadly Weapon During the Commission of the Charged Offense, Causing Injury to a Child.

A. Standard of Review.

In reviewing a challenge to the sufficiency of the evidence, an appellate court must consider the evidence in the light most favorable to the verdict and determine whether any rational factfinder could have found the essential elements of the offense beyond a reasonable doubt. *See Brooks v. State*, 323 S.W.3d 893, 912 (Tex. Crim. App. 2010) (citing *Jackson v. Virginia*, 443 U.S. 307, 99 S.Ct. 2781, 61 L.Ed.2d 560 (1979)) (concluding the *Jackson* standard "is the only standard that a reviewing court should apply" when examining the sufficiency of the evidence); *Hooper v. State*, 214 S.W.3d 9, 13 (Tex. Crim. App. 2007) (citations omitted). The factfinder is the sole judge of the witnesses' credibility and weight to be given to their testimony. *Tate v. State*, 500 S.W.3d 410, 413 (Tex. Crim. App. 2016) (citations omitted). A factfinder may draw multiple reasonable inferences so long as each inference is supported by the

evidence presented at trial. *Hooper*, 214 S.W.3d at 15. Accordingly, the appellate panel will defer to the factfinder's determinations of weight and credibility of the witnesses. *See Brooks*, 323 S.W.3d at 899. In reviewing a deadly weapon finding one panel of another Texas court of appeals noted, "[their] duty, as a reviewing court, is not to reweigh the evidence from reading a cold record but to act as a 'due process safeguard ensuring only the rationality of the factfinder.'" *Brister v. State*, 414 S.W.3d 336, 342 (Tex. App.—Beaumont 2013, pet. granted) (*Brister I*), aff'd, 449 S.W.3d 490 (Tex. Crim. App. 2014) (*Brister II*) (quoting *Williams v. State*, 937 S.W.2d 479, 483 (Tex. Crim. App. 1996)).

B. <u>There Was Insufficient Evidence to Demonstrate that the Appellant Used or Exhibited the Motor Vehicle as a Deadly Weapon During the Commission of the Offense in this Case</u>.

No rational factfinder could find beyond a reasonable doubt that the Appellant used or exhibited the motor vehicle as a deadly weapon when she committed the offense of second-degree felony injury to a child. *See Sierra v. State*, 280 S.W.3d 250, 255 (Tex. Crim. App. 2009) (citing *Cates v. State*, 102

S.W.3d 735, 738 (Tex. Crim. App. 2003)). To be legally sufficient to sustain a deadly weapon finding, the evidence must show: "(1) the object was something that in the manner of its use or intended use was capable of causing death or serious bodily injury; (2) the weapon was used or exhibited during the transaction from which the felony conviction was obtained; and (3) other people were actually endangered." *Brister I*, 414 S.W.3d at 342 (citing *Drichas v. State*, 175 S.W.3d 795, 797 (Tex. Crim. App. 2005) (*Drichas I*), remanded to 219 S.W.3d 471 (Tex. App.—Texarkana 2007, pet. ref'd) (*Drichas II*); *Garza v. State*, 298 S.W.3d 837, 843 (Tex. App.—Amarillo 2009, no pet.)); *see also Cates*, 102 S.W.3d at 738. If a motor vehicle is used in a manner making it capable of causing death or serious bodily injury, it may become a deadly weapon. *Drichas I,* 175 S.W.3d at 799.; *Tyra v. State*, 897 S.W.2d 796, 798 (Tex. Crim. App. 1995); *Ex parte McKithan*, 838 S.W.2d 560, 561 (Tex. Crim. App. 1992) (citation omitted).

In *Cates*, the Court of Criminal Appeals examined whether the evidence was sufficient to support an affirmative finding of a motor vehicle being used

as a deadly weapon during the offense of failing to stop and render aid. 102 S.W.3d at 736. The Court noted the gravamen of the offense of failure to stop and render aid was leaving the scene of the accident. *Id.* at 738. "Therefore, the relevant time period for determining whether his truck was used and exhibited as a deadly weapon is the time period after [the victim] was hit." *Id.* Witnesses at the scene chased the defendant when he failed to stop, and those witnesses testified they traveled at speeds of 85 to 90 miles per hour as they chased the vehicle. *Id.* The Court pointed out that there was no other traffic on the road at the time, and there was no evidence in the record that anyone was in actual danger from the truck while it left the scene of the accident. *Id.* The Court explained that facts occurring before and after an offense can be relevant circumstantial evidence of the offense charged. *Id.* at 739. In concluding the evidence was insufficient to support the deadly weapon finding, the court reasoned there was no evidence indicating the truck was driven in a deadly manner during the offense of failure to stop and render aid. *Id.*

In this case, the State was required to prove that Appellant drove the motor vehicle in a manner capable of causing death or serious bodily injury while committing second-degree felony injury to a child. A person commits second-degree felony injury to a child when the person recklessly commits an act that causes a child serious bodily injury. TEX. PENAL CODE ANN. § 22.04(a)(1), (e). "A person acts recklessly, or is reckless, with respect to circumstances surrounding his conduct or the result of his conduct when he is aware of but consciously disregards a substantial and unjustifiable risk that the circumstances exist or the result will occur." *Id.* § 6.03(c). "The risk must be of such a nature and degree that its disregard constitutes a gross deviation from the standard of care that an ordinary person would exercise under all the circumstances as viewed from the actor's standpoint." *Id.* "Injury to a child is a result-oriented offense requiring a mental state that relates not to the specific conduct but to the result of that conduct." *Williams v. State*, 235 S.W.3d 742, 750 (Tex. Crim. App. 2007).

The trial evidence did not establish that Appellant drove the motor vehicle in a manner capable of causing death or serious bodily injury while committing second-degree felony injury to a child. As trial counsel aptly observed in his closing: "the State didn't provide any witnesses that would allow you to adduce that the vehicle was used as a deadly weapon." (5 RR 292-93). At most, the evidence indicated that Appellant may have driven recklessly at some points prior to the child's injury.

Additionally, the evidence showed that before the transaction underlying the offense of injury to a child occurred, i.e., the complainant's injury, Appellant was unable to exhibit, use, or control the motor vehicle. Whether this reality arose due to the truck catching "air" (3 RR 18) or the front seat passenger tugging on the wheel in a manner which deprived Appellant of use and control of the motor vehicle (3 RR 76, 89; 5 RR 70) the legal significance is the same; Appellant was deprived of the ability to use, exhibit or meaningfully control the motor vehicle before the complainant suffered her tragic injuries.

PRAYER FOR RELIEF

Appellant prays that the Court of Appeals strike that portion of the judgment wherein the trial court found as true that Appellant used or exhibited a deadly weapon and affirm the judgment as modified.

Respectfully submitted on this 28th day of March, 2025.

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CERTIFICATE OF SERVICE

I certify that on this 28th day of March, 2025, a copy of this brief was served on the Brazoria County District Attorney's Office, via electronic service at the address opposing counsel has listed with the electronic service provider.

D. Craig Hughes
D. Craig Hughes

CERTIFICATE OF COMPLIANCE

I certify the foregoing Brief on the Merits complies with Rule 9.4(i)(2)(A) of the Texas Rules of Appellate Procedure. The brief, excluding those portions detailed in Rule 9.4(I) of the Texas Rules of Appellate Procedure, is 5,214 words long. I have relied upon the word count function of Corel WordPerfect, which is the computer program used to prepare this document, in making this representation.

D. Craig Hughes
D. Craig Hughes

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