Affirmed and Memorandum Opinion filed November 28, 2023

In The

Fourteenth Court of Appeals

NO. 14-22-00534-CR

JARAUZ JACK, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the 178th District Court
Harris County, Texas
Trial Court Cause No. 1733847

MEMORANDUM OPINION

Appellant Jarauz Jack was found guilty of failure to stop and render aid and was sentenced to three years in prison. *See* Tex. Transp. Code Ann. § 550.021. Appellant contends that the evidence is legally insufficient to support his conviction because the State did not meet its burden to disprove appellant's necessity defense. For the reasons stated below, we affirm the trial court's judgment.

Background

On January 27, 2020, video surveillance cameras on a nearby convenience store captured footage of a car collision, interaction, and altercation involving appellant and Mohssine Chihani. The collision occurred as appellant and Chihani slowly backed their respective cars into one another in the convenience store parking lot. After the collision, both drivers exited their cars and assessed the damage. The operator of a nearby food truck testified she observed appellant and Chihani yelling outside of appellant's car, where Chihani appeared to be preventing appellant from getting into his car. In a subsequent interview with the police, appellant stated that he was afraid because Chihani could have had a gun and because during the encounter, Chihani threatened him with the statement, "I'm going to kick your ass." This collision and subsequent interaction were the precursors to the incident leading to Chihani's death.

The surveillance video went on to show that as appellant and Chihani spoke, Chihani positioned himself between appellant and appellant's open car door. Chihani then returned to his car attempting to open his passenger door before moving to the driver's side to reach into the car. Chihani emerged with a rectangular black item that he looked at as he held it in both hands. As Chihani returned to the driver side of appellant's car, appellant seated himself in his car, leaving his door open. When Chihani spoke to him, appellant stood and extended his hand toward Chihani with what he said was his insurance information; however, appellant did not hand over the information, but sat back down.[1] Appellant closed his car door, remaining seated inside with the windows up. Chihani then began to walk to the front of appellant's car. Almost as soon as Chihani came in front of the car, appellant drove forward, pushing the car against

[1] Appellant later stated that he did not give him the information because Chihani was cursing at him, threatening again to "kick his ass."

Chihani's legs, alternating between light braking and acceleration. Chihani remained in front of the car as it progressed. He leaned onto the car with his upper body and backpedaled. He ultimately laid down on the hood of appellant's car, facing the windshield. Chihani grabbed the top of the hood and pulled himself fully onto the hood as the car continued to move forward. Chihani held onto the top of the hood as appellant began driving faster.

Appellant drove onto a side street before turning onto another street, where the convenience store's cameras recorded appellant accelerating and driving with Chihani still on the hood. According to appellant's statement in an interview at the police station, Chihani fell or was thrown from the hood when appellant braked, reversed, and turned onto another road. According to medical reports and 911 calls, Chihani struck his head in the fall, causing him to suffer a severe brain injury and go into a coma. Chihani remained in a coma for four months before he was taken off life support and died.

Appellant did not stop his car when Chihani fell from it. Instead, appellant drove to the police station where he spoke with a police officer, Arthelis Carson, about the incident. However, Officer Carson testified that appellant never told him that Chihani was on the hood of the car and fell off. Rather, appellant only told Officer Carson about how frightened he was of Chihani, whom appellant alleged had banged on his window and hood of his car, scaring him before appellant left. Officer Carson's report classified the altercation as terroristic threats. Unaware that Chihani fell from appellant's car, Officer Carson did not dispatch any officers or medical personnel to the scene.

Video cameras outside of the convenience store recorded the majority of the incident, and there were eye witnesses to the event. The operator of a food truck near the convenience store recounted how others at the scene were running and saying, "He killed him. He killed him." Two 911 calls reported the incident as a hit

and run, one stating that Chihani had been "knocked unconscious" and the other stating that Chihani was dead and not moving.

The State charged appellant with murder and failure to stop and render aid. The jury acquitted appellant on the murder charge. Appellant was sentenced to three years in prison for failure to stop and render aid.

Standard of Review

The defense of necessity is a defense to prosecution under Section 2.03 of the Texas Penal Code. *See* Tex. Penal Code Ann. §§ 2.03, 9.22. A defendant asserting a Section 2.03 defense has the burden of producing some evidence to support his claim of the defense. *Zuliani v. State*, 97 S.W.3d 589, 594 (Tex. Crim. App. 2003); *Smith v. State*, 355 S.W.3d 138, 144 (Tex. App.—Houston [1st Dist.] 2011, pet. ref'd). Once the defendant produces that evidence, the State bears the ultimate burden of persuasion to disprove the raised defense. *Zuliani*, 97 S.W.3d at 594. The burden of persuasion does not require that the State produce evidence disproving the defense; rather, it requires that the State prove its case beyond a reasonable doubt. *See id.*; *Saxton*, 804 S.W.2d at 913. If the jury finds the defendant guilty, then it implicitly rejects his defensive theory. *Zuliani*, 97 S.W.3d at 594; *Saxton v. State*, 804 S.W.2d 910, 914 (Tex. Crim. App. 1991).

When a defendant challenges the legal sufficiency of the evidence to support rejection of a defense such as necessity, we must determine whether, after viewing all the evidence in the light most favorable to the prosecution, any rational trier of fact would have found the essential elements of the charged offense beyond a reasonable doubt and also would have found against appellant on the defense of necessity beyond a reasonable doubt. *See Saxton*, 804 S.W.2d at 914 (citing the well-established sufficiency-of-the-evidence standard as outlined in *Jackson v. Virginia*, 443 U.S. 307 (1979)).

The trier of fact is the sole judge of the weight and credibility of the evidence. *See* Tex. Code Crim. Proc. Ann. art. 38.04; *Winfrey v. State*, 393 S.W.3d 763, 768 (Tex. Crim. App. 2013). When conducting a legal sufficiency review, we may not re-evaluate the weight and credibility of the evidence and substitute our judgment for that of the fact finder. *Isassi v. State*, 330 S.W.3d 633, 638 (Tex. Crim. App. 2010).

Law on Defense of Necessity

Appellant asserts the evidence was insufficient to rebut his defense of necessity. Specifically, appellant claims that his decision to drive away after Chihani fell from the hood of his car was necessary to protect himself in a "road-rage incident with a person who might well be armed."

"Necessity is a statutory defense that exonerates a person's otherwise illegal conduct." *Stefanoff v. State,* 78 S.W.3d 496, 500 (Tex. App.—Austin 2002, pet. ref'd) (citing Tex. Penal Code Ann. § 9.22). Conduct is justified by necessity if:

> (1) the actor reasonably believes the conduct is immediately necessary to avoid imminent harm;
>
> (2) the desirability and urgency of avoiding the harm clearly outweigh, according to ordinary standards of reasonableness, the harm sought to be prevented by the law proscribing the conduct; and
>
> (3) a legislative purpose to exclude the justification claimed for the conduct does not otherwise appear plainly.

Tex. Penal Code Ann. § 9.22.

The Penal Code defines "reasonable belief" as "a belief that would be held by an ordinary and prudent man in the same circumstances as the actor." *Harper v. State*, 508 S.W.3d 461, 468 (Tex. App.—Fort Worth 2015, pet. ref'd) (quoting Tex. Penal Code Ann. § 1.07(a)(42)). "Harm" means "anything reasonably regarded as

loss, disadvantage, or injury, including harm to another person in whose welfare the person affected is interested." Tex. Penal Code Ann. § 1.07(a)(25). "Imminent" means something that is immediate, something that is at the point of happening and not about to happen. *See Pennington v. State*, 54 S.W.3d 852, 857 (Tex. App.—Fort Worth 2001, pet. ref'd); *see also Henley v. State*, 493 S.W.3d 77, 89 (Tex. Crim. App. 2016) (necessity defense applies when action is needed "'immediately' (i.e., now) to avoid 'imminent' harm (i.e., harm that is near at hand)"). More than a generalized fear of harm is required to raise the issue of imminent harm. *Stefanoff v. State*, 78 S.W.3d at 501.; *Brazelton v. State*, 947 S.W.2d 644, 648 (Tex. App.—Fort Worth 1997, no pet.).

To raise the necessity defense, a defendant must admit that he committed the offense charged and then offer the alleged necessity as a justification for his conduct. *Young v. State*, 991 S.W.2d 835, 838 (Tex. Crim. App. 1999); *see also Juarez v. State*, 308 S.W.3d 398, 401–02 (Tex. Crim. App. 2010).

Analysis

Appellant argues that there was legally insufficient evidence regarding his defense of necessity. Appellant contends that he met every element of the necessity defense and that the State failed to meet its burden to disprove appellant's necessity defense beyond a reasonable doubt. In viewing all the evidence in the light most favorable to the verdict and deferring to the jury's credibility determinations, we conclude that the jury rationally would have found against appellant's necessity defense beyond a reasonable doubt. *Saxton v. State*, 804 S.W.2d 910, 914 (Tex. Crim. App. 1991).

The jury could have determined that appellant did not reasonably believe that his failure to stop and render aid after Chihani fell from the hood of appellant's car was immediately necessary to avoid imminent harm. Appellant's sole defense

was that his conduct was necessary because he was in fear for his life and had to prevent Chihani from shooting or attacking him in some manner. There was direct evidence that appellant was completely enclosed in his car, Chihani never displayed a weapon, and appellate never opted to stop driving once Chihani was on his hood. Video evidence was presented showing nearly the entirety of the precursory event. The video showed the initial vehicular collision, the ensuing argument between appellant and Chihani, and the appellant's car accelerating onto a main road with Chihani still on the car's hood. The two 911 calls provided evidence that Chihani was unconscious after falling from appellant's car hood. The jury was able to weigh this evidence and determine whether appellant's actions were both immediately necessary and conducted with a reasonable belief of that immediate necessity. *See Winfrey v. State*, 393 S.W.3d 763, 768 (Tex. Crim. App. 2013).

Further, the food truck operator testified about the events that were not captured by the surveillance footage. She testified that other bystanders said, "He killed him. He killed him," after Chihani fell from the hood of appellant's car. The jury could reasonably interpret this testimony in favor of the conclusion that appellant did not reasonably believe his conduct—leaving an incapacitated man on the side of the road after he fell from the hood of a car—was immediately necessary to avoid imminent harm.

After Chihani fell from appellant's car, appellant drove to the police station and spoke to Officer Carson. There were conflicting statements between what appellant told Officer Carson. In a subsequent interview with the police, appellant stated that he told Officer Carson that Chihani was on the hood of the car and fell from the car. However, Officer Carson testified that appellant never told him that.

Rather, Officer Carson testified that appellant only told him how Chihani had pounded on the window and hood of appellant's car.

Appellant said at the police station that he was worried Chihani might have a gun and that Chihani had already threatened to "kick his ass" twice. Yet, appellant told a police officer that appellant never saw Chihani display a weapon. On these points, the jury could weigh the evidence and conclude that appellant did not reasonably believe there was a threat of imminent harm to appellant.

Necessity also requires that the desirability and urgency of avoiding the harm must "clearly outweigh" the harm intended to be prevented by the law prohibiting the conduct. *Juarez v. State*, 308 S.W.3d 398, 403 (Tex. Crim. App. 2010). Here, appellant drove with Chihani clinging to appellant's car hood from the parking lot, to a side street, to a busier street. Even after Chihani fell from the car, appellant did not stop. The subsequent 911 calls describe Chihani as non-responsive. A jury could rationally conclude that appellant's failure to stop and render aid did not "clearly outweigh" the mere possibility that Chihani had a gun and was intent on harming appellant. *Chunn v. State*, 821 S.W.2d 718, 719–20 (Tex. App. 1991) (Even if there were violent indicia, "[a] generalized fear of harm does not constitute a reasonable belief that conduct is 'immediately necessary to avoid imminent harm'").

Based on the record, a rational jury could have found beyond a reasonable doubt:

(1) Appellant did not reasonably believe that he needed to flee the scene to avoid imminent harm at any time; and

(2) The potential harm to appellant from remaining at the scene did not clearly outweigh the harm caused by leaving Chihani, who was incapacitated, on the side of the road.

Therefore, we conclude that the evidence is sufficient to rebut appellant's necessity defense. We overrule appellant's issue on appeal.

Conclusion

We affirm the judgement of conviction.

/s/ Ken Wise
Justice

Panel consists of Justices Wise, Zimmerer, and Poissant.

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