COURT OF APPEALS
SECOND DISTRICT OF TEXAS
FORT WORTH

NO. 02-15-00380-CR

ROBERT CHARLES ATLAS — APPELLANT

V.

THE STATE OF TEXAS — STATE

FROM THE 372ND DISTRICT COURT OF TARRANT COUNTY
TRIAL COURT NO. 1429689R

MEMORANDUM OPINION[1]

A jury convicted appellant Robert Charles Atlas of committing capital murder by killing more than one person during the same criminal transaction. *See* Tex. Penal Code Ann. § 19.03(a)(7)(A) (West Supp. 2016). The victims were the woman with whom Atlas was living and Atlas's unborn child, a girl, with whom the woman was eight months pregnant. Because the State waived the death

[1]*See* Tex. R. App. P. 47.4.

penalty, the trial court sentenced Atlas to life in prison without the possibility of parole. *See id.* § 12.31(a)(2) (West Supp. 2016). In his first point, Atlas—claiming he acted in self-defense—attacks the evidentiary sufficiency, and in his second and third points, he argues that the trial court erred by admitting a previous girlfriend's testimony that he had assaulted her. We affirm.

The evidence

Atlas and Tracy Anderson lived together in a third-floor apartment in Bedford, Texas, and in March 2014 Anderson was pregnant with Atlas's child.

On the evening of Friday, March 21, 2014, Anderson and a girlfriend went to Dallas to celebrate her girlfriend's birthday. They left Dallas around midnight, and Anderson dropped her girlfriend off around 1:00 a.m.

Atlas had spent that evening with his brother-in-law, Tyrence Tolliver. After drinking vodka shots at Anderson and Atlas's apartment, they went to a bar to meet up with some women. Around 1:00 a.m., Anderson called Atlas and accused him of cheating on her, something he had a history of. When Tolliver and Atlas later left the bar, an angry Anderson was waiting for them near Anderson's car, which Atlas was driving that night. Anderson had harsh words for Atlas.

As Atlas drove Tolliver back to his motel, Atlas kept checking texts on his phone. Anderson sent text messages at 1:43 a.m., 1:44 a.m., and 2:36 a.m. indicating that she planned to lock Atlas out of the apartment that night. Atlas's co-worker, Donald Prevost, testified that he and Atlas had previously discussed

how Anderson had locked Atlas out of their apartment in October or November 2013, and Atlas announced that if she did it again, he would kick the door down.

Two days then passed during which Anderson's girlfriend tried unsuccessfully to contact her, so the girlfriend called Anderson's mother to express her concerns. Anderson's mother, who normally talked daily to Anderson and who had likewise noticed her absence, called the police and explained that her pregnant daughter was not answering calls; the police agreed to perform a welfare check on March 23, 2014.

Arriving at Anderson and Atlas's third-floor apartment, the police found the front door forced open; the door's locks appeared to have been engaged from the inside. The officers saw two shattered wood fragments on the ground and two bloody handprints on the wall outside the door. Inside the apartment the officers saw the hallway-bathroom door broken off its frame and lying on the living-room floor. The bathroom door had been broken in from the exterior, and caked blood covered the bathroom floor. The police found Anderson dead nearby on the bedroom floor. On the living-room floor near the blinds, they found a bloody kitchen knife that was of the same general make and appearance as others in a knife block in the kitchen.[2]

[2]The macabre knife block was shaped like a standing human figure with various slits into which knives could be inserted. A photograph shows stored knives transpiercing the figure's "chest," an "upper thigh," and a "knee."

Detectives were not able to locate Atlas through his phone or his co-workers. They did learn, though, that Atlas had not called for emergency medical services for Anderson or their unborn baby daughter. From Atlas's co-worker, Jazmin Garcia, detectives later learned that Atlas had worked on Thursday, March 20, 2014, but was absent on Saturday, March 22, and had failed to call in. Through various tracking techniques, the police eventually found Atlas asleep in his car in a Walmart parking lot in Shreveport, Louisiana, on Tuesday, March 25. While in custody, Atlas orally admitted stabbing Anderson.

Anderson had suffered 56 wounds overall and at least 30 stab wounds, including wounds to her abdomen; her hands displayed obvious defensive wounds. Atlas's unborn daughter received a large laceration on her back, but a doctor testified that had she received immediate medical care, she could have lived.

Atlas had one cut on his right index finger. A detective testified that a stabbing perpetrator can end up with a similar cut. This is because bloody knives become slippery, and if the knife lacks a proper hilt, nothing prevents the hand from sliding down onto the blade. The bloody knife found in Anderson and Atlas's apartment had no cross-piece hilt.

The knife tested positive for Anderson's DNA, and the handle contained a trace of male DNA corresponding to Atlas's. Bloodstained clothing found in Atlas's car also tested positive for Anderson's DNA.

Atlas testified that he broke into his own apartment and went straight to the bathroom to urinate when Anderson (whom he pegged as the aggressor) entered the bathroom with a knife. Atlas contended that they fought over the knife until he was able to seize it, and—afraid for his own life—he then stabbed Anderson until his fear dissipated.

Atlas was six feet tall and muscular; Anderson was five feet, seven inches tall and heavily pregnant.

According to Atlas, this was not the first time that Anderson had attacked him, notwithstanding her pregnancy. Anderson had caught Atlas and Garcia (Atlas's co-worker) in the apartment in February 2014. Garcia admitted at trial that she and Atlas had just had sex. Anderson—six months pregnant at the time—slapped and hit Atlas and grabbed Garcia by the hair. Garcia managed to flee out the front door, while Atlas jumped off the balcony. The police arrested Anderson.[3]

Atlas's sister testified that Anderson was violent, aggressive, and dangerous. Atlas's father also testified that Anderson was aggressive. Garcia testified that Atlas, in contrast, had never been aggressive with her, nor had he ever threatened or hit her.

[3]Anderson's mother testified that Anderson had told her that Atlas had thrown her to the floor, punched her in the stomach, and hit her in the head. But Garcia remembered it differently; she denied that Atlas slapped or hit Anderson.

On rebuttal, the State called Rebecah Benbrook. Atlas and Benbrook had started dating in high school. They dated off and on for seven years and even moved into an apartment together.

According to Benbrook, one night after they had argued, Atlas played his music loudly, and Benbrook asked him several times to turn it down. When Atlas ignored her request, Benbrook walked up behind him and reached over him to turn the music down herself. Atlas responded by pinning her face down on the floor with her arm behind her back. Atlas let her go but took her phone when she wanted to call the police; undaunted, she then yelled for help. This time Atlas grabbed Benbrook around the neck and pinned her to the couch. Benbrook testified that she was not able to breathe for about ten to fifteen seconds. When Atlas let her go a second time, she called the police. A few weeks later, when they talked about the incident, Atlas told Benbrook that he acted as he did because he thought she was going to hurt him.

The State's evidence was sufficient.

In his first point, Atlas contends that the evidence is insufficient to support his conviction because he was acting in self-defense.

In our due-process evidentiary-sufficiency review, we view all the evidence in the light most favorable to the verdict to determine whether any rational factfinder could have found the essential criminal elements beyond a reasonable doubt. *Jackson v. Virginia*, 443 U.S. 307, 319, 99 S. Ct. 2781, 2789 (1979); *Jenkins v. State*, 493 S.W.3d 583, 599 (Tex. Crim. App. 2016). This standard

gives full play to the factfinders' responsibility to resolve conflicts in the testimony, to weigh the evidence, and to draw reasonable inferences from basic facts to ultimate facts. *Jackson*, 443 U.S. at 319, 99 S. Ct. at 2789; *Jenkins*, 493 S.W.3d at 599.

The factfinder is the sole judge of the evidence's weight and credibility. *See* Tex. Code Crim. Proc. Ann. art. 38.04 (West 1979); *Blea v. State*, 483 S.W.3d 29, 33 (Tex. Crim. App. 2016). Thus, when performing an evidentiary-sufficiency review, we may not re-evaluate the evidence's weight and credibility and substitute our judgment for the factfinder's. *See Montgomery v. State*, 369 S.W.3d 188, 192 (Tex. Crim. App. 2012). Instead, we determine whether the necessary inferences are reasonable based on the evidence's cumulative force when viewed in the light most favorable to the verdict. *Murray v. State*, 457 S.W.3d 446, 448 (Tex. Crim. App.), *cert. denied*, 136 S. Ct. 198 (2015). We must presume that the factfinder resolved any conflicting inferences in the verdict's favor, and we must defer to that resolution. *Id.* at 448–49; *see Blea*, 483 S.W.3d at 33.

A person is justified in using force against another when the actor reasonably believes that the force is immediately necessary to protect the actor against the other's use or attempted use of unlawful force. Tex. Penal Code Ann. § 9.31(a) (West 2011). After a defendant has introduced some evidence supporting this defense, the State bears the burden of persuasion to disprove it. *See* Tex. Penal Code Ann. § 2.03 (West 2011); *Zuliani v. State*, 97 S.W.3d 589,

594 (Tex. Crim. App. 2003) (explaining also that a conviction produces an implicit finding against the defensive theory); *see also Kirk v. State*, 421 S.W.3d 772, 777 (Tex. App.—Fort Worth 2014, pet. ref'd). This burden does not require the State to introduce evidence disproving the defense; rather, it requires the State to adhere to its overall burden of proving its case beyond a reasonable doubt. *Zuliani*, 97 S.W.3d at 594. The appellate court—after viewing all the evidence in the light most favorable to the prosecution—asks whether any rational factfinder would have found the offense's essential elements beyond a reasonable doubt and also would have found against the defendant on the defensive issue beyond a reasonable doubt. *Saxton v. State*, 804 S.W.2d 910, 914 (Tex. Crim. App. 1991); *see also Smith v. State*, 355 S.W.3d 138, 144–47 (Tex. App.—Houston [1st Dist.] 2011, pet. ref'd) (applying *Saxton* and *Zuliani* to the jury's rejection of the defendant's self-defense and defense-of-third-person theories).

Viewing the evidence in the light most favorable to the verdict, we see this sequence of events: when Atlas returned to his apartment and found the door locked again, he broke through the door, as he told Prevost he would. Once inside the apartment, Atlas grabbed a kitchen knife, broke through the bathroom door behind which Anderson had taken shelter, and then repeatedly stabbed her while she unsuccessfully attempted to defend herself, as shown by her numerous stab and defensive wounds. Atlas suffered the injury to his finger when his hand slipped down the bloody knife's blade because the knife lacked a cross-piece hilt. Atlas did not call for any medical help but instead left for Louisiana. Both

Anderson and her unborn baby died. Viewing the evidence in that light, a rational factfinder could have found the offense's essential elements and also could have found Atlas's self-defense claim incredible beyond a reasonable doubt. *See Saxton*, 804 S.W.2d at 914. We overrule Atlas's first point.

Benbrook's testimony was admissible.

In Atlas's second point, he argues that he did not open the door to Benbrook's testimony that he had assaulted her without physical provocation after an argument. In his third point, he contends that Benbrook's testimony was inadmissible under any legal theory. We disagree with Atlas on both points.

Appellate courts apply an abuse-of-discretion standard when reviewing a trial judge's admission of evidence. *Martinez v. State*, 327 S.W.3d 727, 736 (Tex. Crim. App. 2010), *cert. denied*, 563 U.S. 1037 (2011). Such an abuse occurs only when a trial court's determination falls outside the zone of reasonable disagreement. *Id.*; *Casey v. State*, 215 S.W.3d 870, 879 (Tex. Crim. App. 2007). If the trial court's evidentiary ruling is correct on any legal theory applicable to that ruling, the reviewing court will uphold that decision. *De La Paz v. State*, 279 S.W.3d 336, 344 (Tex. Crim. App. 2009); *Sandoval v. State*, 409 S.W.3d 259, 297 (Tex. App.—Austin 2013, no pet.).

The rules of evidence favor admitting relevant evidence but generally prohibit admitting extraneous conduct to prove a person's character or to show that the person acted in conformity with that character. *See* Tex. R. Evid. 402, 404(a)(1). Nevertheless, extraneous-conduct evidence may be admissible when

it becomes relevant apart from character conformity. *Devoe v. State*, 354 S.W.3d 457, 469 (Tex. Crim. App. 2011). Trial courts may admit extraneous conduct for some other purpose, such as to show motive, opportunity, intent, preparation, plan, knowledge, identity, absence of mistake, or lack of accident. *See* Tex. R. Evid. 404(b); *Montgomery v. State*, 810 S.W.2d 372, 387–88 (Tex. Crim. App. 1991) (op. on reh'g). Moreover, the rule's listed exceptions are not exhaustive. *See De La Paz*, 279 S.W.3d at 343. Extraneous-conduct evidence may also be admissible to rebut defensive theories. *See Williams v. State*, 301 S.W.3d 675, 687 (Tex. Crim. App. 2009) (upholding defensive-theory rebuttal as a Rule 404(b) purpose for admission), *cert. denied*, 560 U.S. 966 (2010).

When the accused claims self-defense or accident, in order to establish intent the State may show other violent acts in which the accused was an aggressor. *Lemmons v. State*, 75 S.W.3d 513, 523 (Tex. App.—San Antonio 2002, pet. ref'd) (citing *Halliburton v. State*, 528 S.W.2d 216, 217–18 (Tex. Crim. App. 1975); *Johnson v. State*, 963 S.W.2d 140, 144 (Tex. App.—Texarkana 1998, pet. ref'd); *Bradley v. State*, 960 S.W.2d 791, 803 (Tex. App.—El Paso 1997, pet. ref'd); *Robinson v. State*, 844 S.W.2d 925, 929 (Tex. App.—Houston [1st Dist.] 1992, no pet.)).

Atlas opened the door to Benbrook's testimony when he claimed self-defense. *See Lemmons*, 75 S.W.3d at 523. We overrule Atlas's second point.

The legal theory on which Benbrook's testimony was admissible was to show Atlas's intent, that is, that he was capable of being and—according to

Benbrook—had been the first aggressor when assaulting a woman in the past. *See id.* We overrule Atlas's third point.

Conclusion

Having overruled each of Atlas's points, we affirm the trial court's judgment.

/s/ Elizabeth Kerr
ELIZABETH KERR
JUSTICE

PANEL: WALKER, MEIER, and KERR, JJ.

DO NOT PUBLISH
Tex. R. App. P. 47.2(b)

DELIVERED: June 29, 2017