IN THE COURT OF CRIMINAL APPEALS OF TEXAS

NO. PD-1044-19

RICKY MORENO, Appellant

v.

THE STATE OF TEXAS

ON STATE'S PETITION FOR DISCRETIONARY REVIEW FROM THE FIFTH COURT OF APPEALS DALLAS COUNTY

KELLER, P.J., delivered the opinion for a unanimous Court.

In his aggravated kidnapping prosecution, Appellant claimed the defense of duress. In connection with this defense, he sought to offer evidence that he suffered from Post Traumatic Stress

Disorder (PTSD). The trial court excluded this evidence, but the court of appeals reversed, holding that evidence of PTSD was relevant to showing duress. We disagree, because the defense of duress applies only to the type of compulsion that a person of "reasonable firmness" could not resist and PTSD evidence would show merely that the defendant has a greater sensitivity to compulsion than a person of reasonable firmness. Consequently, we reverse the judgment of the court of appeals.

I. BACKGROUND

A. Trial

Avigail Villanueva was Martin Armijo's ex-girlfriend. She had dated him for five or six months after meeting him at Thomas Johnson's garage apartment. Jonathan Gutierrez was the father of Villanueva's children. Through a series of phone conversations on July 1, 2016, Villanueva learned that Armijo was holding and torturing Gutierrez at the garage apartment and arranged to meet them. Armijo sent Appellant to pick Villanueva up. Appellant picked her up alone but seemed nervous.

After entering the home, Villanueva saw Armijo hit Gutierrez with a baseball bat, pour bleach on him, and throw a pocket knife at him. Armijo did these acts multiple times, and at some point, these attacks caused Gutierrez's death. During these attacks, Appellant went in and out of the garage apartment. Armijo told Appellant to look for something to wrap up Gutierrez's body. Armijo later told Appellant to stay outside and to watch and "make sure nobody . . . went back there." A cell-phone video showed Appellant placing a bottle of bleach and some towels on a bed, and according to a police detective, Appellant did not appear to be afraid in the video. Appellant admitted in a police interview that he had held Gutierrez's legs down while Armijo taped Gutierrez's hands together.

The court of appeals has set out the admitted evidence in much greater detail, including other evidence in the case that we need not address.[1] Suffice it to say that this evidence included Appellant's own statements indicating that Armijo had threatened him and evidence that Appellant was scared of Armijo.

At the guilt stage of trial, Appellant sought to introduce evidence that he suffered from PTSD. This evidence indicated that he developed PTSD from witnessing the shooting death of his father during a home invasion. He sought to establish the facts of the home invasion through a police detective, to offer evidence of him having PTSD through two psychiatrists, and to offer, through one of the psychiatrists, evidence that this PTSD made him more susceptible to feeling threatened by Armijo and more emotionally affected by the perceived threats.

The trial court excluded the evidence. Nevertheless, the defense of duress was submitted in the guilt-stage jury charge. Implicitly rejecting that defense, the jury convicted Appellant. At the punishment stage, Appellant was permitted to introduce his PTSD evidence. The jury sentenced Appellant to forty-five years in prison and imposed a fine of $10,000.

B. Appeal

On appeal, Appellant contended that the PTSD evidence was admissible at the guilt stage of trial because it was relevant to his defense of duress. The court of appeals agreed.[2] Appellant's main argument appeared to be that his proffered testimony "would have demonstrated that [a]ppellant was

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[1] *See Moreno v. State*, 586 S.W.3d 472, 478-86 (Tex. App.—Dallas 2019).

[2] *Id.* at 494-96. The court of appeals appears to have hedged its ruling somewhat, suggesting that not all of the evidence that Appellant proffered through the three PTSD witnesses is necessarily admissible. *Id.* at 496 n.7.

more susceptible to duress than an ordinary person."[3] Relying upon cases from other jurisdictions holding that evidence of battered-women's syndrome was relevant to duress, the court of appeals suggested that "any assessment of the reasonableness of a defendant's actions must take into account the defendant's 'particular circumstances,' at least to a certain extent."[4] The court of appeals concluded that the jury in Appellant's case "did not hear testimony identifying aspects of appellant's particular circumstances that could have aided them in assessing the reasonableness of his actions."[5]

Further concluding that Appellant was harmed by the error (under the standard for nonconstitutional errors), the court of appeals reversed the trial court's judgment of conviction and remanded the case for further proceedings.[6]

II. ANALYSIS

The cardinal rule of statutory construction is that we construe a statute in accordance with the plain meaning of its text unless the text is ambiguous or the plain meaning would lead to absurd results that the legislature could not have possibly intended.[7] Under the duress statute, "It is an affirmative defense to prosecution that the actor engaged in the proscribed conduct because he was compelled to do so by threat of imminent death or serious bodily injury to himself or another."[8]

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[3] *See id.* at 494 (brackets in original).

[4] *Id.* at 495-96 (quoting from *United States v. Nwoye*, 824 F.3d 1129, 1137 (D.C. Cir. 2016)).

[5] *Id.* at 496.

[6] *Id.* at 497-98, 500.

[7] *Griffith v. State*, 166 S.W.3d 261, 262 (Tex. Crim. App. 2005) (citing *Boykin v. State*, 818 S.W.2d 782, 785 (Tex. Crim. App.1991)).

[8] TEX. PENAL CODE § 8.05(a).

However, the statute limits the availability of this affirmative defense by circumscribing the meaning of "compulsion": "Compulsion within the meaning of this section exists only if the force or threat of force would render a person of reasonable firmness incapable of resisting the pressure."[9] The obvious import of this definition of compulsion is that it creates an objective standard. We do not look to whether the defendant was rendered incapable of resisting the pressure. Instead, we look to the effect the pressure would have on "a person of reasonable firmness."

It is equally obvious that "a person of reasonable firmness" is not someone who has become more susceptible to coercion because of a traumatic event. The whole import of Appellant's PTSD evidence is that he is not a person of reasonable firmness. That sort of evidence is irrelevant to Texas's duress defense, which requires compulsion to be measured by the "person of reasonable firmness" standard.

The court of appeals's reliance on battered-woman-syndrome cases from other jurisdictions is misplaced for several reasons.[10] First, in the federal cases involving federal prosecutions, duress was a defense at common law, not a statutory defense.[11] For those cases, then, the courts were not constrained by statutory language in deciding whether battered-woman-syndrome evidence would logically be relevant to duress. But we are constrained by statutory language because the defense of duress is codified by statute in Texas. Second, one of the jurisdictions cited by the court of appeals had a statute specifically authorizing the admission of this type of evidence on the issue of

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[9] *Id.* § 8.05(c).

[10] The cases from other jurisdictions that we cite below were all cited by the court of appeals. *See Moreno*, 586 S.W.2d at 495-96.

[11] *See United States v. Lopez*, 913 F.3d 807, 813 (9th Cir. 2019); *United States v. Willis*, 38 F.3d 170, 175 (5th Cir. 1994).

duress.[12] Texas has no such statute. Third, the duress statutes in some of these jurisdictions include language, unlike that of the Texas statute, that might afford more latitude to introduce subjective evidence about the defendant.[13] Finally, often defendants seek to introduce battered-women-syndrome evidence on the issue of duress when the batterer is the alleged cause of the duress. In that situation, the evidence is arguably relevant for the purpose of showing a complete picture of the alleged duress-inducing threat made by the batterer in light of the entire relationship.[14] That purpose,

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[12] *See Commonwealth v. Asenjo*, 477 Mass. 599, 607, 82 N.E.3d 966, 973 (2017) (citing MASS. G. L. c. 233, § 23F) (that statute in turn allows admission for defense of "duress" for certain purposes "(a) evidence that the defendant is or has been the victim of acts of physical, sexual or psychological harm or abuse; (b) evidence by expert testimony regarding the common pattern in abusive relationships; the nature and effects of physical, sexual or psychological abuse and typical responses thereto, including how those effects relate to the perception of the imminent nature of the threat of death or serious bodily harm; the relevant facts and circumstances which form the basis for such opinion; and evidence whether the defendant displayed characteristics common to victims of abuse.").

[13] *See State v. Richter,* 245 Ariz. 1, 4, 7, 424 P.3d 402, 405, 408 (2018) ("which a reasonable person in the situation would not have resisted"); *Wonnum v. State*, 942 A.2d 569, 572 (Del. 2007) ("reasonable person in the defendant's situation would have been unable to resist"); *State v. B.H.*, 183 N.J. 171, 188, 189, 870 A.2d 273, 283, 284 (2005) ("which a person of reasonable firmness in his situation would have been unable to resist") (commenting that "the 'standard established by the Code is not wholly external' in that the defense allows consideration of the defendant's 'situation.'"); *State v. Williams*, 132 Wash.2d 248, 258 (1997) ("That such apprehension was reasonable upon the part of the actor").

[14] *See Dando v. Yukins*, 461 F.3d 791, 801-02 (6th Cir. 2006); *Nwoye*, 824 F.3d at 1139; *Richter*, 245 Ariz. at 7, 424 P.3d at 408; *Wonnum*, 942 A.2d at 573-74 ("In determining whether the elements of duress are met, the fact-finder may take into account the objective situation in which the defendant was allegedly subjected to duress. In addition to the immediate circumstances of the crime, this would include evidence concerning the defendant's past history with the person making the unlawful threat.") (quoting from *Willis*, 38 F.3d at 177 n.8); *Williams*, 132 Wash.2d at 251-52, 258-59 ("the reasonableness of the defendant's perception of immediacy should be evaluated in light of the defendant's experience of abuse" from the person allegedly subjecting her to duress); *cf. Willis*, 38 F.3d at 174-78 (ultimately upholding trial court's decision not to allow testimony about battered-woman syndrome at guilt stage of trial but recognizing that the trial court gave substantial latitude to the defense to allow introduction of evidence of relationship between defendant and batterer alleged to have exerted duress on her); *B.H.*, 183 N.J. at 198-201, 870 A.2d at 289-91

however, does not apply to Appellant's case.[15]

We reverse the judgment of the court of appeals and remand the case to it to address Appellant's remaining unaddressed claims.[16]

Delivered: June 17, 2020

Publish

(holding battered-woman-syndrome evidence relevant to show "subjective perception of threat from her abuser" and "why she would remain with her abuser" but not relevant to whether a "person of reasonable firmness" would have been unable to withstand the pressure).

[15] We express no opinion on whether PTSD evidence would be relevant under the Texas duress statute in a case where that purpose did apply (when the source of the PTSD, such as an abusive spouse, is also the alleged source of the duress).

[16] The Court of Appeals rejected two sufficiency-of-the-evidence claims and a motion-to-suppress claim, but it did not resolve all of Appellant's issues and did not reach the State's cross-point. *See Moreno*, 586 S.W.3d at 490, 492, 500.