Opinion filed February 8, 2018

In The

Eleventh Court of Appeals

No. 11-16-00048-CR

DANNY MUNGUIA A/K/A DANIEL MUNGUIA, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the 70th District Court
Ector County, Texas
Trial Court Cause No. A-44,103

M E M O R A N D U M O P I N I O N

Danny Munguia a/k/a Daniel Munguia pleaded guilty to the murder of Alexandra Ann Kennedy. TEX. PENAL CODE ANN. § 19.02(b)(1) (West 2011). Appellant elected for a jury to assess punishment. The jury assessed punishment at

confinement for life and a $10,000 fine. Appellant presents seven issues on appeal. We affirm.

On July 4, 2014, Appellant hit, choked, or strangled Kennedy, killing her. Appellant told a paramedic who arrived at the scene that he and Kennedy "had been drinking and things got a little heated." Appellant said that "he went to bed and . . . woke up around 4:00 or 6:00 in the morning, thought she was fine and went back to sleep." Appellant did not call paramedics until 10:00 a.m.

In Appellant's first issue, he argues that the trial court erred when it allowed Appellant's former girlfriend, Sarah Zamudio, to testify over his objection about prior bad acts that Appellant had committed against her. In his second issue, Appellant contends that the trial court erred when it overruled his objection to a portion of the State's closing argument during the punishment phase because the State "requested jurors to abandon their objectivity." In his third issue, Appellant argues that the trial court erred when it overruled his objection to a portion of the testimony of Richard Dixon, a sergeant with the Ector County Sheriff's Office, in which he said that Appellant did not appear to feel any grief or remorse for Kennedy's death. In Appellant's fourth issue, he argues that the trial court erred when it admitted into evidence multiple "gruesome and cumulative photographs." In his fifth issue, Appellant contends that the trial court erred when it allowed the State to introduce evidence about a prior bad act that Appellant had committed against Kennedy. In Appellant's sixth and seventh issues, he argues that the evidence was both legally and factually insufficient, respectively, to support the jury's rejection of his claim of sudden passion.

In Appellant's first issue, he asserts that the trial court erred when it allowed Zamudio to testify during the punishment phase about six extraneous offenses or bad acts that Appellant had committed against her in violation of Rule 403 of the Texas

Rules of Evidence. In his fifth issue, Appellant contends that the trial court violated Rule 403 when it admitted evidence, during the punishment phase, that Appellant had once attempted to drown Kennedy.

We review a trial court's decision to admit or exclude evidence under an abuse of discretion standard. *Montgomery v. State*, 810 S.W.2d 372, 391 (Tex. Crim. App. 1991). "Under an abuse of discretion standard, an appellate court should not disturb the trial court's decision if the ruling was within the zone of reasonable disagreement." *Bigon v. State*, 252 S.W.3d 360, 367 (Tex. Crim. App. 2008). The trial court has wide discretion to determine the admissibility of evidence at the punishment phase. *Henderson v. State*, 29 S.W.3d 616, 626 (Tex. App.—Houston [1st Dist.] 2000, pet. ref'd).

Section 3(a) of Article 37.07 of the Texas Code of Criminal Procedure grants a trial court broad discretion to admit evidence of extraneous crimes or bad acts during the punishment phase. The relevant statutory language is:

> [E]vidence may be offered by the state and the defendant as to any matter the court deems relevant to sentencing, including but not limited to the prior criminal record of the defendant, his general reputation, his character, an opinion regarding his character, the circumstances of the offense for which he is being tried, and, notwithstanding Rules 404 and 405, Texas Rules of Evidence, any other evidence of an extraneous crime or bad act that is shown beyond a reasonable doubt by evidence to have been committed by the defendant or for which he could be held criminally responsible, regardless of whether he has previously been charged with or finally convicted of the crime or act.

TEX. CODE CRIM. PROC. ANN. art. 37.07, § 3(a)(1) (West Supp. 2017).

"Evidence is 'relevant to sentencing,' within the meaning of [Article 37.07, section 3(a)], if the evidence is 'helpful to the jury in determining the appropriate sentence for a particular defendant in a particular case.'" *McGee v. State*, 233 S.W.3d 315, 318 (Tex. Crim. App. 2007) (quoting *Rodriguez v. State*, 203 S.W.3d

837, 841–42 (Tex. Crim. App. 2006)). The test for relevancy is much broader during the punishment phase and allows a jury to consider more evidence in exercising its discretion to assess punishment within the appropriate range. *See Murphy v. State*, 777 S.W.2d 44, 63 (Tex. Crim. App. 1989) (op. on reh'g).

"Rule 403 creates a presumption of admissibility of all relevant evidence and authorizes a trial judge to exclude such evidence only when there is a 'clear disparity between the degree of prejudice of the offered evidence and its probative value.'" *Mozon v. State*, 991 S.W.2d 841, 847 (Tex. Crim. App. 1999) (quoting *Joiner v. State*, 825 S.W.2d 701, 708 (Tex. Crim. App. 1992)); *see* TEX. R. EVID. 403; *Hammer v. State*, 296 S.W.3d 555, 568 (Tex. Crim. App. 2009). "'Unfair prejudice' does not, of course, mean that the evidence injures the opponent's case—the central point of offering evidence. Rather, it refers to 'an undue tendency to suggest decision on an improper basis, commonly, though not necessarily, an emotional one.'" *Rogers v. State*, 991 S.W.2d 263, 266 (Tex. Crim. App. 1999) (quoting *Cohn v. State*, 849 S.W.2d 817, 820 (Tex. Crim. App. 1993)).

A Rule 403 analysis includes, but is not limited to, the following factors: (1) how probative the evidence is; (2) the potential of the evidence to impress the jury in some irrational, yet indelible way; (3) the time the proponent needs to develop the evidence; and (4) the proponent's need for the evidence. *Shuffield v. State*, 189 S.W.3d 782, 787 (Tex. Crim. App. 2006); *see also Gigliobianco v. State*, 210 S.W.3d 637, 641–42 (Tex. Crim. App. 2006).

Under the first factor, the probative value of the evidence was high. Zamudio testified that Appellant harassed, kidnapped, assaulted, and attempted to rape her. The State also introduced evidence that Appellant had previously tried to drown Kennedy. Such evidence demonstrates a pattern of conduct by Appellant. *See Fowler v. State*, 126 S.W.3d 307, 311 (Tex. App.—Beaumont 2004, no pet.)

("Evidence of defendant's prior assaults certainly had a tendency to cause a jury to increase his punishment. But that was its legitimate purpose. The value of the extraneous offense evidence was in permitting the jury to tailor the sentence to the defendant."). Therefore, the evidence of the extraneous offenses or bad acts that the trial court admitted was probative because it allowed the jury to consider Appellant's punishment in light of Appellant's pattern of conduct as shown by the State. *See id.* at 311.

Additionally, the jury's consideration of the extraneous offenses or bad acts would not have impressed the jury in "some irrational, yet indelible way." *Erazo v. State*, 144 S.W.3d 487, 489 (Tex. Crim. App. 2004). Appellant argues on appeal that Zamudio's testimony was "graphic, detailed, and explicit." However, a trial court does not err simply because it admits graphic evidence. *See Sonnier v. State*, 913 S.W.2d 511, 519 (Tex. Crim. App. 1995). Furthermore, Appellant argues that, because certain court documents that pertained to Appellant's attempt to drown Kennedy were admitted, "the question arises as to whether the jury made its punishment decision based on an improper basis, i.e. based on the indictment pertaining to an alleged extraneous offense." We note, though, that Appellant need not have been convicted of an offense in order for the trial court to admit evidence of that offense. *See* CRIM. PROC. art. 37.07, § 3(a)(1). Appellant also argues that the 9-1-1 call recording was unduly prejudicial because "the jury learned of an extraneous offense . . . directly from Kennedy herself" and Appellant was "unable to cross-examine Kennedy." We disagree. *See, e.g.*, *Patterson v. State*, No. 02-12-00212-CR, 2013 WL 2631183, at *2–3 (Tex. App.—Fort Worth June 13, 2013, no pet.) (mem. op., not designated for publication) (holding that admission of a 9-1-1 call recording, which included the decedent's voice, during punishment phase was not unduly prejudicial under Rule 403).

Appellant argues that the evidence fails under the third factor as well. He contends that Zamudio's testimony was unduly long because it "covered eighteen (18) consecutive pages." He also argues that the 9-1-1 call recording and Sergeant Dixon's testimony concerning Appellant's attempt to drown Kennedy were "cumulative." However, the State "had the responsibility to present sufficient evidence for the jury to find that the extraneous offenses were proved beyond a reasonable doubt." *King v. State*, No. 01-16-00730-CR, 2017 WL 3526716, at *5 (Tex. App.—Houston [1st Dist.] Aug. 17, 2017, no pet.) (mem. op., not designated for publication).

Finally, the State had a need for the evidence. As discussed above, the extraneous offenses or bad acts demonstrated a pattern of conduct by Appellant that allowed the jury to appropriately tailor his punishment. Therefore, we hold that the trial court did not abuse its discretion when it determined that the prejudicial effect of the prior-bad-acts evidence did not outweigh its probative value. Appellant's first and fifth issues are overruled.

In his fourth issue, Appellant argues that the trial court erred when it admitted various photographs that showed Kennedy's body, including a photograph that a forensic pathologist, Dr. Richard Christian Fries, took during Kennedy's autopsy. At trial, Appellant objected under Rule 403 of the Texas Rules of Evidence. The photographs the trial court admitted over Appellant's objections—marked as Exhibit Nos. 32, 39, 42, 43, 44, 45, 46—showed Kennedy's body and the surrounding crime scene. Exhibit No. 246, which the trial court also admitted over Appellant's objection, was a photograph from Kennedy's autopsy.

In addition to the four factors we use to determine whether the probative value of evidence is outweighed by its prejudicial effect, in the context of photographic evidence specifically, we also consider the following: the number of photographs,

the size of the photograph, whether it is in color or black and white, the detail shown in the photograph, whether the photograph is gruesome, whether the body is naked or clothed, and whether the body has been altered since the crime in some way that might enhance the gruesomeness of the photograph to Appellant's detriment. *Shuffield*, 189 S.W.3d at 787; *Sonnier*, 913 S.W.2d at 518. Generally, photographs are admissible if testimony about the matters that the photographs depict would be admissible and if the probative value is not substantially outweighed by the prejudicial effect. *Threadgill v. State*, 146 S.W.3d 654, 671 (Tex. Crim. App. 2004).

While the photographs at issue may be gruesome, the photographs marked as Exhibit Nos. 32, 39, 42, 43, 44, 45, and 46 "depict nothing more than the reality of the brutal crime committed." *Sonnier*, 913 S.W.2d at 519. "A trial court does not err merely because it admits into evidence photographs which are gruesome." *Id.* Additionally, "[a]utopsy photographs are generally admissible unless they depict mutilation of the victim caused by the autopsy itself." *Fields v. State*, 515 S.W.3d 47, 57 (Tex. App.—San Antonio 2016, no pet.) The trial court admitted the photograph marked as Exhibit No. 246 into evidence during Dr. Fries's testimony.

During Dr. Fries's testimony, the State sought to introduce several autopsy photographs into evidence. Dr. Fries testified that the photographs he took during Kennedy's autopsy would assist the jury in understanding his testimony. Dr. Fries testified that Exhibit No. 246 depicted Kennedy's "removed" tongue, on which there was "a laceration . . . which frequently is caused by biting the tongue." Dr. Fries said that it "would . . . take some force . . . to produce that type of laceration." Therefore, Exhibit No. 246 "was helpful to aid the jury in understanding [Dr. Fries's] verbal testimony regarding the injuries sustained by" Kennedy. *Thorn v. State*, No. 09-15-00340-CR, 2016 WL 1600329, at *2 (Tex. App.—Beaumont Apr. 20, 2016, pet. ref'd) (mem. op., not designated for publication); *see Harris v. State*, 661

S.W.2d 106, 107–08 (Tex. Crim. App. 1983) (holding that trial court did not err when it admitted autopsy photograph of child's deflected scalp to show skull fractures that caused the child's death).

We have reviewed the photographs marked as Exhibit Nos. 32, 39, 42, 43, 44, 45, 46, and 246 and do not believe that they are so disturbing that a juror of normal sensitivity would not be able to rationally decide the issues involved in the case after viewing the photographs. *See Alvarado v. State*, 912 S.W.2d 199, 212 (Tex. Crim. App. 1995). We hold that the trial court did not abuse its discretion when it admitted the photographs at issue into evidence over Appellant's Rule 403 objections. Appellant's fourth issue is overruled.

In Appellant's third issue, he argues that the trial court erred when it admitted what Appellant claims to be speculative testimony of Sergeant Dixon. During Sergeant Dixon's testimony on direct examination, the prosecutor asked him if Appellant showed "any physical manifestation of grief" or if Sergeant Dixon saw any tears when Sergeant Dixon interviewed him. Sergeant Dixon answered "[n]o" to both questions. The prosecutor also asked Sergeant Dixon whether Appellant's "voice [broke] or something like that." After Sergeant Dixon replied that it did, the prosecutor asked, "What did you make of that?" Defense counsel objected and argued that the question called for speculation. The trial court overruled the objection and permitted Sergeant Dixon to answer. Sergeant Dixon answered, "It was manufactured." On appeal, Appellant argues that Sergeant Dixon's answer was "pure conjecture."

"Texas Rules of Evidence 602 and 701 apply when a party objects on the grounds that testimony is speculative." *Pitcock v. State*, No. 11-13-00213-CR, 2015 WL 4722213, at *2 (Tex. App.—Eastland July 30, 2015, pet. ref'd) (mem. op., not designated for publication); *see Solomon v. State*, 49 S.W.3d 356, 364–65 (Tex.

Crim. App. 2001); *see also* TEX. R. EVID. 602, 701. Rule 602 requires that a witness have personal knowledge of the matter about which he is testifying. TEX. R. EVID. 02. Rule 701 addresses lay witness opinion testimony. TEX. R. EVID. 701. The first prong of Rule 701 requires that a witness rationally base his testimony on what he perceived. *See* TEX. R. EVID. 701; *Solomon*, 49 S.W.3d at 364; *see also Fairow v. State*, 943 S.W.2d 895, 897 (Tex. Crim. App. 1997). A witness rationally bases his opinion on his perception if "a reasonable person could draw [the same opinion] under the circumstances." *Fairow*, 943 S.W.2d at 900. "The second prong of Rule 701 requires that the witness's opinion be helpful to the trier of fact." *Pitcock*, 2015 WL 4722213, at *2; *see Solomon*, 49, S.W.3d at 364; *see also* TEX. R. EVID. 701.

"An individual cannot have personal knowledge of another's mental state." *Pitcock*, 2015 WL 4722213, at *2. However, "it is quite another thing if the testimony is an 'interpretation of the witness's objective perception of events (i.e. his own senses or experience).'" *Id.* (quoting *Fairow*, 943 S.W.2d at 899). "A person may possess 'personal knowledge of facts from which an opinion regarding mental state may be drawn.'" *Id.* Sergeant Dixon had the opportunity to interview and observe Appellant. As a result, through what he perceived, he could testify as to what he believed it meant when Appellant's voice broke during the interview. *See* TEX. R. EVID. 602, 701; *Solomon*, 49 S.W.3d at 364; *Fairow*, 943 S.W.2d at 898–900. Further, because a reasonable person could believe that, with no other "physical manifestation of grief," Appellant's cracking voice during the interview was "manufactured," Sergeant Dixon's opinion was rationally based on what he perceived. *See Fairow*, 943 S.W.2d at 898–900.

Further, under Rule 701, the witness's testimony must be helpful to the jury. *Solomon*, 49 S.W.3d at 364. Testimony is helpful when it helps the jury understand

the witness's testimony or understand a fact issue. *Fairow*, 943 S.W.2d at 900. A trial court's decision regarding admissibility is committed to its sound discretion. *Id.* at 901. It is likely that the trial court found that Sergeant Dixon's testimony would help the jury understand why Appellant acted as he did during the interview. Therefore, Sergeant Dixon's testimony helped the jury understand a fact issue under Rule 701. *See* TEX. R. EVID. 701; *Solomon*, 49 S.W.3d at 364; *Fairow*, 943 S.W.2d at 900.

Although Appellant asserts that "[t]he jury should have been given the opportunity to view the video [of Appellant's interrogation] and make [its] own determinations," "a witness may testify to what he or she believes." *Pitcock*, 2015 WL 4722213, at *2. In *Pitcock*, this court held that a trial court did not err when it allowed, over defense counsel's speculation objection, a police officer to testify about what it "meant" to him when a driving-while-intoxicated suspect told him, "[T]ake me to jail for what I did." *Id.* at *1–2. This court held that the officer's opinion in response to that question was not speculative because it met both prongs of Rule 701. *Id.* at *2. Similarly, because in this case neither the question that the prosecutor asked Sergeant Dixon nor the answer that Sergeant Dixon provided called for or resulted in speculative testimony, the trial court did not err when it allowed this testimony. We cannot say that the trial court abused its discretion when it admitted Sergeant Dixon's testimony. Appellant's third issue is overruled.

In his second issue, Appellant argues that the trial court erred when it overruled his objection to portions of the prosecutor's closing argument during the punishment phase. Appellant specifically contends that the prosecutor's arguments "requested the jury to abandon their objectivity and to set [Appellant's] punishment based on fear and vengeance."

We review a trial court's ruling on an objection to improper jury argument under an abuse of discretion standard. *See Davis v. State*, 329 S.W.3d 798, 825 (Tex. Crim. App. 2010). Proper jury argument generally falls within four areas: (1) summation of the evidence, (2) reasonable deduction from the evidence, (3) answer to argument of opposing counsel, or (4) plea for law enforcement. *Brown v. State*, 270 S.W.3d 564, 570 (Tex. Crim. App. 2008); *Esquivel v. State*, 180 S.W.3d 689, 692 (Tex. App.—Eastland 2005, no pet.). Counsel is allowed wide latitude to draw inferences from the record, as long as the inferences are reasonable, fair, legitimate, and offered in good faith. *Shannon v. State*, 942 S.W.2d 591, 597 (Tex. Crim. App. 1996).

The following occurred during the prosecutor's closing argument:

> [PROSECUTOR]: And punishment in this case is a life sentence. And to give this man sudden passion, there is no sudden passion in this case.
>
> No wife is safe in this community if you do so. If you do anything like that.
>
> [DEFENSE COUNSEL]: Your Honor, I'm going to object. That is, that is called for a verdict on an improper reason.
>
> THE COURT: Overruled.
>
> [PROSECUTOR]: What kind of message do you send to husbands, to people that do this if you do not send a message that this is something we will not tolerate?
>
> Who is safe from this if you do that? If you do anything less than life.
>
> Anytime you get into an argument, you're taking your life in your own hands, if that's the road we go down.

We note that, in order to preserve jury argument error, the complaining party must make a contemporaneous objection and receive an adverse ruling. *Cooks v. State*, 844 S.W.2d 697, 727 (Tex. Crim. App. 1992); *see* TEX. R. APP. P. 33.1(a). Therefore, because defense counsel did not make a contemporaneous objection to the portion of the prosecutor's argument that he made after the trial court overruled defense counsel's first objection, we hold that Appellant has not preserved error for our review in regard to that portion of the prosecutor's argument. *See Bullis v. State*, No. 11-14-00240-CR, 2016 WL 5853267, at *7 (Tex. App.—Eastland Sept. 30, 2016, no pet.) (mem. op., not designated for publication) (holding that error was not preserved because defense counsel did not timely object to the prosecutor's closing argument).

The State argues that Appellant did not preserve error for our review in regard to the portion of the prosecutor's argument to which defense counsel objected because defense counsel did not adequately state the grounds for his objection. We agree with the State that Appellant did not state his objection with regard to the first portion of the prosecutor's argument with sufficient specificity to preserve error for our review. *See Daniel v. State*, No. 11-15-00059-CR, 2017 WL 3540224, at *7 (Tex. App.—Eastland Aug. 10, 2017, no pet.) ("The objecting party must state the grounds to support the requested ruling 'with sufficient specificity to make the trial court aware of the complaint, unless the specific grounds were apparent from the context.'" (quoting TEX. R. APP. P. 33.1(a)(1)(A)); *see also Bullock v. State*, No. 01-90-00358-CR, 1991 WL 44916, at *6 (Tex. App.—Houston [1st Dist.] 1991, no pet.) (not designated for publication) (holding that "[a]ppellant's general objection that [the prosecutor's closing] argument was 'improper' presents nothing for review"). Because defense counsel did not state the grounds for his objection with sufficient

specificity, Appellant has not preserved error for our review in regard to the portion of the prosecutor's argument to which defense counsel objected.

However, even if Appellant had preserved error, the prosecutor's argument that, "to give this man sudden passion, there is no sudden passion in this case" was proper because the jury charge included a special issue on "sudden passion." Additionally, we construe the prosecutor's argument that, if the jury did not sentence Appellant to life in prison, "[n]o wife is safe in this community" as a proper plea for law enforcement. Therefore, even if Appellant did preserve error for our review with regard to the first portion of the prosecutor's argument, the trial court did not abuse its discretion when it overruled Appellant's objection. Appellant's second issue is overruled.

In Appellant's sixth and seventh issues, he asserts that the evidence was legally and factually insufficient to support the jury's rejection of his claim of sudden passion. Murder is typically a first-degree felony. PENAL § 19.02(c). But at the punishment phase of a trial, "the defendant may raise the issue as to whether he caused the death under the immediate influence of sudden passion arising from an adequate cause. If the defendant proves the issue in the affirmative by a preponderance of the evidence, the offense is a felony of the second degree." *Id.* § 19.02(d); *see McKinney v. State*, 179 S.W.3d 565, 569 (Tex. Crim. App. 2005). "Sudden passion," under the circumstances of this case, means passion provoked by the decedent that "arises at the time of the offense and is not solely the result of former provocation." PENAL § 19.02(a)(2). An "adequate cause" is a cause that would "commonly produce a degree of anger, rage, resentment, or terror in a person of ordinary temper, sufficient to render the mind incapable of cool reflection." *Id.* § 19.02(a)(1).

The issue of sudden passion is akin to an affirmative defense because the defendant has the burden of proof by a preponderance of the evidence. *See Matlock v. State*, 392 S.W.3d 662, 667 & n.14 (Tex. Crim. App. 2013); *Bradshaw v. State*, 244 S.W.3d 490, 502 (Tex. App.—Texarkana 2007, pet. ref'd). As an affirmative defense, sudden passion may be evaluated for legal and factual sufficiency, even after the Court of Criminal Appeals issued its opinion in *Brooks v. State*, 323 S.W.3d 893, 912 (Tex. Crim. App. 2010). *See Butcher v. State*, 454 S.W.3d 13, 20 (Tex. Crim. App. 2015); *Matlock*, 392 S.W.3d at 669–70. In a legal sufficiency review of an affirmative defense, reviewing courts should first examine the record for a scintilla of evidence favorable to the factfinder's finding and disregard all evidence to the contrary unless a reasonable factfinder could not. *Butcher*, 454 S.W.3d at 20; *Matlock*, 392 S.W.3d at 669–70. The factfinder's rejection of a defendant's affirmative defense should be overturned for lack of legal sufficiency only if the appealing party establishes that the evidence conclusively proves his affirmative defense and that "no reasonable [factfinder] was free to think otherwise." *Butcher*, 454 S.W.3d at 20 (alteration in original) (quoting *Matlock*, 392 S.W.3d at 670).

In a factual sufficiency review of a finding that rejects an affirmative defense, courts examine all of the evidence in a neutral light. *Butcher*, 454 S.W.3d at 20; *Matlock*, 392 S.W.3d at 671. A finding that rejects a defendant's affirmative defense cannot be overturned unless, after it sets out the relevant evidence that supports the verdict, the court clearly states why the verdict is so against the great weight of the evidence as to be manifestly unjust, conscience-shocking, or clearly biased. *Butcher*, 454 S.W.3d at 20; *Matlock*, 392 S.W.3d at 671.

In reviewing Appellant's legal sufficiency challenge, we first review the evidence supporting the jury's rejection of Appellant's claim of sudden passion. *See*

Matlock, 392 S.W.3d at 670. We note that the State presented evidence that Appellant had a history of violence toward Kennedy and others. Zamudio testified that Appellant was violent during their relationship. She testified about a specific incident, which occurred after she broke up with Appellant, in which Appellant unexpectedly entered her car and took her into his apartment against her will. She said that, when she attempted to leave his apartment, Appellant hit and locked the door and then hit her multiple times. Additionally, Sergeant Dixon testified that Appellant had previously been arrested for attempting to restrict Kennedy's airway with water. Kennedy's mother testified that she noticed bruises on Kennedy during Appellant and Kennedy's relationship and that she was concerned that Appellant was abusing Kennedy.

The jury also heard evidence that Appellant was not "excited" or "frantic" when paramedics arrived at the scene. William Moody, a paramedic and firefighter with Odessa Fire Rescue, testified, "Typically, people are crying, they want to know what happened. . . . [I]t's just pandemonium." Finally, Sergeant Dixon testified that Appellant was "fairly cold" and did not show "any physical manifestation of grief" when Sergeant Dixon interviewed him. All of these actions support the jury's rejection of Appellant's claim of sudden passion.

Appellant argues on appeal that the jury should have accepted his claim of sudden passion because he told police that, when Kennedy slapped him, "he just 'snapped' and physically retaliated against her." However, this assertion was inherently dependent on the jury's evaluation of his credibility. The jury was free to reject any or all of his version of the events. Appellant's statements to law enforcement did not prove his claim of sudden passion. Accordingly, Appellant's legal sufficiency challenge to the jury's rejection of his claim of sudden passion must fail. *See Matlock*, 392 S.W.3d at 670. Appellant's sixth issue is overruled.

In reviewing Appellant's factual sufficiency challenge to the jury's rejection of his claim of sudden passion, we review all of the evidence in a neutral light to determine if the contrary evidence greatly outweighs the evidence that supports the jury's determination. *See id.* at 671. As noted previously, the contrary evidence in this case consisted of Appellant's version of the altercation, which the jury rejected. Appellant's version of the encounter did not greatly outweigh the evidence that supported the jury's rejection of Appellant's claim of sudden passion. Based on all the evidence, the jury could have disbelieved Appellant's narrative of events and inferred from other evidence that Appellant's acts were purposeful and part of a pattern of violent conduct, rather than a result of sudden passion. Viewing the evidence in a neutral light, we find that the jury's answer to the sudden-passion special issue is not so against the great weight and preponderance of the evidence as to be manifestly unjust or clearly wrong. Appellant's seventh issue is overruled.

We affirm the judgment of the trial court.

JIM R. WRIGHT
SENIOR CHIEF JUSTICE

February 8, 2018

Do not publish. *See* TEX. R. APP. P. 47.2(b).

Panel consists of: Willson, J.,
Bailey, J., and Wright, S.C.J.[1]

[1]Jim R. Wright, Senior Chief Justice (Retired), Court of Appeals, 11th District of Texas at Eastland, sitting by assignment.