AFFIRM; and Opinion Filed March 19, 2018.

In The
Court of Appeals
Fifth District of Texas at Dallas

No. 05-16-01305-CR

DAMOND WILLIAMS, Appellant
V.
THE STATE OF TEXAS, Appellee

On Appeal from the 291st Judicial District Court
Dallas County, Texas
Trial Court Cause No. F-1475914-U

MEMORANDUM OPINION

Before Justices Lang, Brown, and Whitehill
Opinion by Justice Brown

Following a jury trial, Damond Williams appeals his conviction for the murder of Bobby Ray Ervin. In two issues, appellant challenges the sufficiency of the evidence to support the jury's rejection of his self-defense claim and contends the trial court violated his common-law right to allocution. We affirm.

BACKGROUND

The indictment alleged that on or about June 2, 2014, appellant intentionally and knowingly caused Ervin's death by shooting him with a firearm. In the alternative, the indictment alleged appellant intended to cause serious bodily injury to Ervin and committed an act clearly dangerous to human life, shooting Ervin with a firearm, thereby causing his death. Appellant was seventeen years of age at the time of the offense. It was undisputed that appellant shot Ervin in the chest.

The issue was whether he did so in self-defense. Appellant's first trial ended in a mistrial because the jury was unable to reach a verdict, and he was retried a few months later. The second jury found appellant guilty of murder and assessed his punishment at thirty years' confinement and a $10,000 fine.

SUFFICIENCY OF THE EVIDENCE

In his first issue, appellant challenges the sufficiency of the evidence to support the jury's rejection of his claim of self-defense. A person is justified in using force against another when and to the degree the actor reasonably believes 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). A person is justified in using deadly force against another if the actor would be justified in using force under section 9.31 and when and to the degree the actor reasonably believes the deadly force is immediately necessary to protect the actor against the other's use or attempted use of unlawful deadly force. *Id.* § 9.32(a) (West 2011).

When an appellant challenges the sufficiency of the evidence on the basis of his claim of self-defense, we do not look to whether the State presented evidence that refuted self-defense. *Gaona v. State*, 498 S.W.3d 706, 709 (Tex. App.—Dallas 2016, pet. ref'd). Instead, after reviewing all the evidence in the light most favorable to the verdict, we determine whether any rational trier of fact could have found the essential elements of the offense beyond a reasonable doubt and found against the appellant on the self-defense issue beyond a reasonable doubt. *Id.* The jury resolves any conflicts in the testimony and determines the credibility of the witnesses and the weight to be given their testimony. *Id.* When the jury determines the defendant is guilty, there is an implicit finding against the defensive theory. *Id.*

Temilah Jones was Ervin's friend and was with him when he was shot. On the night of June 2, 2014, they were at an apartment complex in South Dallas. Ervin was "kind of sad" due to

"an incident with one of his friend's family members," or put another way, he "felt like he was falling out with his homeboys." Ervin, Jones, and Jones's cousin Shaquila Hunter walked up to a corner store called Little World. Inside the store, a commotion started between Ervin and three other people. Those three people, who had come to the Little World together, were appellant, Leanta Watson, and Taurus Pratt. Jones thought she knew their faces from Facebook, but described the events as "taking place between complete strangers." Jones did not see the commotion begin, but heard Ervin saying, "Leave me alone." He was angry. Jones did not hear Ervin threaten to rob or kill anyone. Appellant's group left the store first and walked to the right. Jones, Ervin, and Hunter also left the store and started to the left to go back to the apartment. Then Watson called Ervin a "broke ass Nigga." Ervin got angry and wanted to fight even though it was three against one. Ervin started walking in their direction. He said, "I'm gonna make y'all go get that burner." Jones explained that a "burner" was a gun and Ervin was trying to say they were going to lose the fight with him. At some point, appellant, Watson, and Pratt got into a car. When the shooting took place, appellant was "in the driver side door." When it looked like appellant was reaching for a gun, Ervin said to him, "Like, what are you doing? This ain't got nothing to do with you." Appellant began shooting.

Videos taken inside and outside of the store were admitted into evidence and played for the jury. They do not have sound. The video outside the store shows the car appellant, Watson, and Pratt were in pulling into the parking lot. The driver's side of the car is in the bottom right corner of the video and is not visible. Watson and Pratt go into the store, and appellant enters a short time later. Ervin and his friends enter the store a few seconds after appellant. The video inside the store shows the entryway; the cash register is around a corner to the right and is not on screen. Ervin turns the corner while his friends wait near the entryway. Hunter and Jones appear to take notice of something happening around the corner. Then appellant, Pratt, and Watson leave

the store together, walking past Hunter and Jones. Ervin follows them, but stops where his friends are standing and does not immediately exit the store after them. He is animated and appears to be saying something to appellant's group. Ervin walks back around the corner to quickly get his merchandise. Then he and the women leave the store.

The video taken outside the store shows appellant, Pratt, and Watson exit the store and head to their car, which is to the right of the door. As appellant nears the car, a gun is visible in his right hand. Ervin then exits the store and starts to go left, but drops his purchases and heads over to appellant's car. Appellant is on the driver's side out of view of the camera. Pratt and Watson are standing on the passenger's side. Ervin is still on the walkway running the length of the storefront, but is near appellant's car. He walks away to the left, but stops and turns back around. He points in the direction of Pratt and Watson and walks toward the car. Ervin appears to be a few feet from the car. Pratt and Watson get in the car at that point, and Ervin starts to walk off again. Then he turns back around and heads to the passenger's side of the car again. He points and appears to be talking. Then Ervin ducks and runs off quickly, and appellant's car leaves the parking lot. According to the time stamp on the videos, Ervin and appellant are inside the store together for less than forty-five seconds, and the whole incident takes place in less than a minute and a half.

Jones testified about what was depicted in the videos. Both the State and the defense asked her about what Ervin was doing with his pants. Jones testified that Ervin was holding up his pants because they were baggy and he did not have on a belt. She denied that he was trying to get something out of his pocket. That night, Ervin was wearing a Nike shirt that said, "Built for Battle." Jones stated it was "just a shirt" and had nothing to do with what happened. When they came out of the store, Ervin started to the left to go back to the apartment and that is when Watson told him he was a "broke ass nigga." Watson was "saying stuff" to Ervin while appellant stood

and watched. Just before appellant shot Ervin, Ervin told him, "You don't have nothing to do with this."

Hunter, who was with Ervin and Jones at the Little World, testified that Ervin was in a good mood on the way to the store. Inside the store, an argument started. Words were exchanged between Ervin and Watson. When Watson, Pratt, and appellant left the store, they were not saying anything. Ervin was still talking to them, but he went back and paid for his items. When Hunter, Jones, and Ervin left the store, they initially headed left to go back to the apartment. Someone said something to Ervin that caused him to throw down his purchases and head to the right. Hunter stated that someone told Ervin to "go get some money," meaning he was broke. Once Watson and Pratt got inside the car, Watson said something else. Ervin took offense and told Watson to get out of the car and fight. Ervin told them, "It's three of y'all and one of me, y'all gone have to go get a burner." Appellant was standing by the open car door on the driver's side. Ervin told appellant that "this ain't got nothing to do with him." Ervin did not have a weapon.

Pratt, who was with appellant on the night in question, was called as a witness by the State. Pratt described appellant and Watson as his "street partners" and said they were already at the counter when Ervin came in the store. Ervin approached them and started "saying his name, hitting on the desk, and clapping his fist." According to Pratt, Ervin was "talking all crazy." Pratt did not know him. Pratt told Ervin that he did not fight anymore. Pratt said, "It didn't look like he had nothing, but you can't tell from how a person acting." Pratt testified that Ervin "escalated the situation" and followed them out of the store to their car. Pratt said, "We was kind of scared. We didn't know what he was capable of or who he is." Ervin came up to the car and was talking specifically to Watson. He was talking about "what he would do to one another." Pratt told appellant, "Let's get out of here" because he was scared. According to Pratt, appellant could have gotten in the car and driven off.

On cross-examination, Pratt said that while they were in the store, Ervin told Watson, "You shoot me, you gone die." Ervin was fidgeting with his pants. He looked like he was on drugs because he was "moving so fast and so aggressive." When Ervin came out of the store, he pointed at Watson and kept telling him, "You shoot me, you gone die; I'm gone kill you." Pratt claimed he did not see the shooting because he was doing other stuff in the car. He looked up when he heard some shots. He saw Ervin running off. Ervin's words and actions placed Pratt in fear of being harmed or killed. Appellant drove off. At first, appellant's behavior was normal. But his demeanor changed and Pratt stated that he started "looking at us crazy." Appellant had the gun on the side of him as if to warn that if Pratt "tried any sudden movement, something will happen." "If we try to go against him, something gone happen."

The police questioned Pratt and Watson after the shooting and developed appellant as a suspect, but were unable to locate him. Detective Greg Ceraso spoke to appellant numerous times, and appellant was aware the detective wanted to question him. Police reached out to the U.S. Marshall Fugitive apprehension team and created a wanted bulletin. In August 2014, police received an anonymous call giving them a description of a person, vehicle, and location. Officers observed the person, who turned out to be appellant, leaving the house and getting in the vehicle. Officer Jose Ortaz saw the car run a stop sign, so he turned on his lights and sirens and pursued the car. After about three-and-a-half minutes, the suspect stopped his car, opened the door, and took off running. Another officer found appellant and took him into custody.

Appellant gave a custodial interview to a police detective. A video recording of the interview was played for the jury. Appellant said he drove his mom's car to the Little World on June 2. He was at the cash register when a "dude he didn't know" came in and started "mugging." Appellant explained that "mugging" meant "talking." The person, who turned out to be Ervin, was saying things like, "I'll beat y'all up" and I'll rob y'all." Appellant thought Pratt knew Ervin

due to a conflict over a girl. Appellant told Ervin to "just chill." When appellant left the store, he pulled out his gun and cocked it as he walked to the car. Ervin followed them outside and had his hand in his pocket. Ervin "ran up on the car." Appellant told the detective, "I just shot him." Appellant said he was scared for his life and did not want to take any chances. He left the scene because he was scared. Appellant threw the gun out of the car while on the freeway.

The defense did not present any witnesses or evidence.

Appellant argues it was undisputed that Ervin started the commotion inside the Little World. Ervin's friends could not say who started the commotion, while Pratt testified that Ervin started aggressively pounding on the sales counter. Appellant also argues it was undisputed that he and his friends left Ervin in the Little World and none of them said anything to Ervin as they were leaving the store; Ervin followed appellant's group and talked aggressively to them. According to appellant, the record provides overwhelming support for Pratt's having been scared by appellant's speech and conduct. Ervin approached the car appellant and his friends were in and wanted to fight them. According to appellant, Ervin's threats were akin to death threats or threats of serious bodily injury and no rational jury could have concluded that appellant did not have the right to protect himself from the apparent danger Ervin presented. He claims the video shows Ervin repeatedly reaching for his waistband.

Each side contends the video evidence supports its theory of the case. The jury was entitled to interpret the events captured on video and reach its own conclusions, as well as resolve any other conflicts in the evidence. These conflicts included whether appellant was afraid of Ervin as he exited the store and got out the gun he took into the store with him and whether Ervin appeared to be reaching for a gun in his waistband or was merely pulling up his pants. Although appellant contends Ervin threatened him with death and serious bodily injury, Jones testified she did not hear Ervin threaten to rob or kill anyone and instead heard him tell appellant's group to leave him

alone. In addition, Pratt indicated that appellant could have simply driven away. The jury could have rationally found that Ervin's behavior could not have produced a reasonable belief by appellant that Ervin posed an immediate threat of unlawful deadly force. *See Gaona*, 498 S.W.3d at 710.

Also, the jury was entitled to consider appellant's actions after the shooting in rejecting his claim of self-defense. Such actions indicated consciousness of guilt and were inconsistent with his self-defense claims. *See Valdez v. State*, 841 S.W.2d 41, 43 (Tex. App.—Houston [14th Dist.] 1992, pet. ref'd). He immediately fled the scene, displayed threatening behavior to his "street partners," and disposed of the weapon. Also, he avoided detection for over two months and ran from the police when they located him. We conclude a rational trier of fact could have found the essential elements of murder beyond a reasonable doubt and found against appellant on the self-defense issue beyond a reasonable doubt. We overrule appellant's first issue.

ALLOCUTION

In his second issue, appellant contends the trial court violated his common-law right to allocution such that he is entitled to a new punishment hearing. Appellant acknowledges the trial court complied with the statute pertaining to allocution by asking if there was any legal reason appellant should not be sentenced at that time. *See* TEX. CODE CRIM. PROC. ANN. art. 42.07 (West 2006) (before pronouncing sentence, defendant shall be asked whether he has anything to say why sentence should not be pronounced against him). Appellant complains of the trial court's failure to inquire if he wished to exercise his common-law right to allocution or had anything to say beyond the limited reasons in article 42.07 why sentence cannot be pronounced. *See id.* Appellant has failed to preserve this issue for appellate review. As a prerequisite to presenting a complaint for appellate review, the record must show that the specific complaint was made to the trial court. *See* TEX. R. APP. P. 33.1(a). Appellant did not object at trial on grounds he was denied his

common-law right of allocution and raises this issue for the first time on appeal. He has failed to preserve error. *See Norton v. State*, 434 S.W.3d 767, 771 (Tex. App.—Houston [14th Dist.] 2014, no pet.). We overrule appellant's second issue.

We affirm the trial court's judgment.

/Ada Brown/
ADA BROWN
JUSTICE

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TEX. R. APP. P. 47.2(b).

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Court of Appeals
Fifth District of Texas at Dallas

JUDGMENT

DAMOND WILLIAMS, Appellant	On Appeal from the 291st Judicial District Court, Dallas County, Texas
No. 05-16-01305-CR V.	Trial Court Cause No. F-1475914-U.
	Opinion delivered by Justice Brown,
THE STATE OF TEXAS, Appellee	Justices Lang and Whitehill participating.

Based on the Court's opinion of this date, the judgment of the trial court is **AFFIRMED**.

Judgment entered this 19th day of March, 2018.