

AFFIRM; and Opinion Filed May 25, 2018.



**In The
Court of Appeals
Fifth District of Texas at Dallas**

No. 05-16-01448-CR

**CARIS DENELL BRYANT, Appellant
V.
THE STATE OF TEXAS, Appellee**

**On Appeal from the Criminal District Court No. 3
Dallas County, Texas
Trial Court Cause No. F15-23635-J**

MEMORANDUM OPINION

Before Justices Lang-Miers, Fillmore, and Stoddart
Opinion by Justice Fillmore

Caris Denell Bryant was charged by indictment with aggravated robbery enhanced by a prior felony conviction. A jury found Bryant guilty, found the enhancement allegation to be true, and assessed punishment of thirty years' confinement. In a single issue, Bryant contends the evidence is factually insufficient to support the jury's rejection of his affirmative defense of duress. We affirm trial court's judgment.

Background

Johnathan Hart, his girlfriend Tara Daugherty and her son, Zaylan, his mother, Rhonda Hart, and Johnathan's three children by an ex-girlfriend lived together in a house in Garland. On the morning of March 27, 2015, Bryant and two other individuals, with "something [concealing] their nose and mouth," confronted Tara and Zaylan as they were leaving the house to go to Zaylan's school. Tara testified she did not know the three men. One of the robbers pointed a gun in Tara's

face, wrapped his arm around her neck in a chokehold, held the gun to the back of her head, and told her to take them to Johnathan. Upon entering the house, they walked toward the master bedroom, where Johnathan was sleeping. According to Tara, the first robber entered the master bedroom and turned on the light. The second robber stood in the hallway with Tara. Bryant entered the house, holding a gun to the back of Zaylan's head. Zaylan was screaming and crying. Tara pleaded with Bryant to give Zaylan to her. As Zaylan moved toward Tara, Rhonda opened her bedroom door, pulled Zaylan into her room, and closed the door. Bryant opened Rhonda's door and instructed Rhonda and Zaylan to come into the hall, which they did. Bryant handed his gun to the second robber who was standing in the hallway with Tara, Rhonda, and Zaylan, and went into the master bedroom where the first robber was holding Johnathan at gunpoint.

The second robber instructed Tara, Rhonda, and Zaylan to go into the bathroom. In the bathroom, with the door open, Tara surreptitiously called 911 and provided her address. Tara testified she heard yelling and arguing in the master bedroom followed by gunfire. The second robber watching the bathroom ran outside and dropped his gun by the front door as he fled. Tara saw the first robber run out of the master bedroom. She entered the master bedroom and saw Johnathan, who was armed and heading outside. Tara went outside, saw Johnathan walking down the street, then ran back to the bathroom as Bryant was leaving. The article previously covering Bryant's nose and mouth was around his neck, no longer partially concealing his face. Tara "grabbed [Bryant] and told him he wasn't going anywhere." Tara "tussle[ed] with [Bryant] all the way down the hallway," trying to prevent his escape. According to Tara, Bryant "pull[ed her] hair and [her] earring out and told [her]," "Bitch, I'll kill you," so Tara let Bryant go. Tara testified that Bryant also threatened to kill Zaylan. Tara followed Bryant outside "because [she knew] Johnathan [was] coming, and [she told Johnathan], '[Bryant's] right there.' And at this point, Johnathan fire[d] at him." Bryant fell to the ground as if he had been shot, and Johnathan dragged him back to his driveway where Tara was armed with "the gun that Jonathan had as well as the

two guns that [the robbers] dropped.” For the duration of these events, which lasted “[a]bout 12, 13 minutes,” 911 was on the phone. Tara and Johnathan held Bryant down until the police arrived. The trial record reflected that Tara identified Bryant in a police line-up after he was arrested. At trial, Tara identified Bryant as the man who held a gun to the back of Zaylan’s head and tussled with her in the hallway.

Tara’s testimony and the recording of her 911 call, which was played for the jury at trial, indicated that while Johnathan and Tara were holding Bryant and waiting for the police to arrive, Bryant told Tara, “they made me do it.” Bryant stated, “Tay set this up and that [Tay] was gonna kill [Bryant] if he didn’t do this.” Tara testified that “Tay” was a reference to Tavion Davis, the brother of Johnathan’s ex-girlfriend and uncle to Johnathan’s three other children. Bryant told Tara and Johnathan that “Bubba” and “Mike-Mike,” who Tara did not know, also were involved and parked “over there in a gray Nissan.” Tara did not see a gray Nissan or any other vehicle in the area. Tara was aware Johnathan had previously accused Tavion of stealing \$40,000 from him around October of 2014. Regarding the involvement of Tavion, Bubba, and Mike-Mike in the robbery, Tara testified that “if [Bryant] was saying it, [she] figured [Bryant] was telling the truth.”

Rhonda testified that on the morning of the incident, she woke to hear Tara tearfully asking someone to “bring her her baby.” Rhonda immediately got up, “opened the door to look . . . down the hall,” and saw a young man “holding” Zaylan. As Zaylan came down the hall, Rhonda “grabbed him and took him back into the bedroom” where Rhonda was “[b]ecause [there were] intruders in the house.” After she closed the bedroom door, one of the robbers opened it and told Rhonda, who was terrified, and Zaylan to come out into the hall and go into the bathroom, which they did. Rhonda could hear arguing in the master bedroom, and was “screaming” while she was in the bathroom. The robber keeping watch over Rhonda, Tara, and Zaylan in the bathroom “kept pushing the [bathroom] door open, looking into the bathroom where [they] were.” Rhonda heard gunfire in the bedroom, and believed that her “child [Jonathan was] killed.” According to Rhonda,

Tara went into the master bedroom, then returned to the bathroom and said Johnathan was not dead. Rhonda took Zaylan into her bedroom while Tara walked down the hall. When Rhonda came out of her bedroom, she saw Tara “tussling” with a man in the hall who told her “[he] would kill her, bitch.” Rhonda later went outside and saw Johnathan bring Bryant back to their yard “by force.” Rhonda did not “let [Bryant] out of [her] eyesight before the police got there.” Rhonda watched as the police arrested Bryant. After the arrest, Rhonda identified Bryant in a police lineup as the man who tussled with Tara in the hallway, was dragged back to the house by Jonathan, and held until the police arrived and arrested him. Rhonda testified, and her March 27, 2015 written statement to the Garland police reflected, that while waiting for the police to arrive, Bryant “mentioned” that Tavion, Mike-Mike, and Bubba “had put him up to it and [were] parked around the corner in a car.” Rhonda identified Bryant at trial.

Johnathan testified he woke up on the morning of the incident “[w]ith a guy at [his] door with his arm around [Tara’s] neck with a gun pointed at [him].” Bryant entered the bedroom, and demanded to know where “everything” was, which Johnathan understood to mean “money, cars, jewelry.” Johnathan told Bryant the safe was in the closet, and Bryant “[went] to the bathroom where the closet is at.” Johnathan testified he was scared, and thought he might die. Johnathan was lying face down in his bed, and the “guy with the gun on [him was] telling [him] not to move.” When Johnathan got out of bed and onto his feet anyway, the robber with the gun tried to “pistol whip” him. According to Johnathan, the robber holding him at gunpoint was looking back and forth from Johnathan to the closet “trying to see what [Bryant] found. And then when he look[ed] back [at the closet] again, [Johnathan] d[o]ve for [his] gun and [he] start[ed] shooting.” Johnathan testified he grabbed his own gun and began shooting because he “thought that was the only way [he] was gonna save [his] family.” The robber fired back until he ran out of bullets,¹ then ran out

¹ Johnathan testified he believed the robber had run out of bullets “[b]ecause [he] stopped firing and then he ran.”

of the house with Johnathan in pursuit and the other two robbers following close behind. Returning to the house, Johnathan saw Bryant “coming out [of his] house across the front yard into [his] neighbor’s yard.” Johnathan fired at Bryant, who fell, leading Johnathan to believe Bryant had been hit. Johnathan dragged Bryant from his neighbor’s yard into his own yard, where Tara was “hysterical” and on the phone with the police. At trial, Johnathan identified Bryant as the person “that had came out of [his] house.” Johnathan testified that Bryant told him “Young Tay” had “sent him,” “[o]r they was gonna kill [him].” Johnathan knew Tavion, and testified Tavion had previously stolen \$40,000 and a pistol from him. According to Johnathan, Bryant told him that Mike-Mike and Bubba also were involved in the robbery.

Johnathan testified he knew and recognized Bryant, he knew another suspect, Erron Watson, because they “grew up together in the same neighborhood,” and saw “Dequalon” drop his gun at the scene. He also indicated he knew and would recognize “the other people that [Bryant] said sent [Bryant] or set it up,” although he did not see any of them at the scene of the robbery. Bryant “told [Johnathan] Young Tay was around the corner in a silver Nissan,” but Johnathan did not see a silver Nissan in the area. Johnathan testified he saw a gray Impala drive down the street as he chased Bryant. Johnathan gave the police two guns he found on the premises. Johnathan believed one of the guns was the gun Tavion had stolen from him, and indicated “the only way these three suspects would have been able to get that gun was if Tavion Davis gave it to them.” Johnathan testified he believed “100 percent” that “Tavion Davis set this all up,” because he “never had any bad blood” with Bryant, and there was “no reason [Bryant] would come in [his] house and try to rob [him]” “unless somebody planted something into his mind” or “forced him.” Johnathan testified Tavion was “very” capable of being violent, and “if [Bryant] said [Tavion was] gonna kill [him] if [he did not participate in the robbery], that would be believable.” Johnathan further testified Bryant was the “person [Johnathan] held down until the police got there,” the person Tara “was screaming at” when Bryant was holding a gun to Zaylan’s head, and “the same person [he]

thought he would have to protect [his] family from.”

Officer Chad Stallings of the Garland Police Department testified he was dispatched to Johnathan’s residence for a shooting or possible robbery on the day of the incident. When he arrived at the scene, he saw Johnathan holding Bryant to the ground, and saw a pistol on top of a garbage can outside the front of the house. Upon investigating the scene, Officer Stallings found shell casings inside the home and bullet holes in different walls in the master bedroom. He testified it appeared “there had been a lot of shooting in the house.” A neighbor told the police at the scene that someone “had tried to get transported to the hospital because . . . they’d been shot,” and the police detained a second man with a bullet wound in his leg, Dequalon Barnes, within two blocks of Johnathan’s house. According to Officer Stallings, the police learned a vehicle, possibly a Nissan, “may [have been]” involved, but the car was not occupied when they located it. Officer Stallings could not remember the make and model of the car, but “[thought] there was a bullet impact somewhere on the vehicle.” At trial, Officer Stallings identified Bryant as the man being held down by Jonathan when he arrived at the scene.

Officer Ibrahim Dhaud of the Garland Police Department was the second officer to arrive at the scene. He testified that, upon his arrival, he noticed two guns sitting on top of a garbage can in front of the house. Inside the house, he saw bullet holes throughout the master bedroom. Photographs of the house, including the master bedroom, and multiple bullet holes and casings throughout the house were shown to Officer Dhaud and admitted into evidence. Officer Dhaud provided testimony concerning a photograph, which was admitted into evidence, of a Glock firearm with an extended clip. He explained to the jury that an extended clip “takes more than an average – average gun can hold anywhere from 12 to 25 rounds, but this clip holds a lot more.” While he did not remember taking notes at the scene or from whom he obtained the information in his notes, Officer Dhaud confirmed that under the name “Brian Jimson [in his notes] . . . there’s a notation that said ‘had her son with gun to his head and brought him from outside.’” Detective

Dhaud also described a photograph admitted into evidence of a black or dark blue vehicle with a bullet hole at the scene.

Detective Gary Sweet of the Garland Police Department was the lead detective on the case. Detective Sweet testified that when he arrived at the scene, “[it l]ooked like a massive shootout had just occurred.” Detective Sweet interviewed Tara, Johnathan, and the two apprehended robbers, Bryant and Barnes. According to Detective Sweet, Johnathan provided information concerning Tavion, Bubba, and Mike-Mike, all of whom Johnathan appeared to know, and stated he believed “they may be involved in this as well, or at least Tay.” Detective Sweet acknowledged he became aware during the course of his investigation that Johnathan was a convicted felon and in unlawful possession of a firearm on the day of the incident. Detective Sweet testified he did not charge Johnathan with unlawful possession of a firearm by a felon because, “he’s in his own house and he’s got a home invasion robbery with three people coming in and he’s defending himself. I think anyone would have probably taken the same action . . . [and i]t had been past five years that he was convicted.” Detective Sweet identified Bryant as the man Johnathan detained at the scene.

Sufficiency of the Evidence

In his sole issue, Bryant challenges the factual sufficiency of the evidence to support the jury’s implied rejection of his affirmative defense of duress. In making this argument, Bryant relies on statements he made while waiting for the police to arrive that Tavion would kill him if he did not participate in the aggravated robbery, and Johnathan’s statements that he believed Tavion planned the robbery.

Standard of Review

In a challenge to the factual sufficiency of the jury’s adverse finding on an affirmative defense, we apply the standard of review set forth in *Clewis v. State*, 922 S.W.2d 126 (Tex. Crim. App. 1996). *Matlock v. State*, 392 S.W.3d 662, 664, 667 (Tex. Crim. App. 2013) (factual sufficiency standard applicable to sufficiency reviews of affirmative defense); *see also Butcher v.*

State, 454 S.W.3d 13, 20 (Tex. Crim. App. 2015) (applying factual sufficiency review to jury’s rejection of affirmative defense).² In a factual sufficiency review of a rejected affirmative defense, we consider the entire body of evidence in a neutral light and determine whether the jury’s adverse finding was so against the great weight and preponderance of the evidence as to be manifestly unjust. *Matlock*, 392 S.W.3d at 671. We may not usurp the function of the jury by substituting our judgment for the factfinder’s assessment of the weight and credibility of witness testimony. *Id.* We may sustain an appellant’s factual sufficiency challenge only if we clearly state why the verdict is so against the great weight and preponderance of the evidence as to be “manifestly unjust, conscience-shocking, or clearly biased.” *Butcher*, 454 S.W.3d at 20 (quoting *Matlock*, 392 S.W.3d at 671).

Duress is an affirmative defense to prosecution, TEX. PENAL CODE ANN. § 8.05 (West 2011), requiring the defendant to prove by a preponderance of the evidence that he committed the offense “because he was compelled to do so by threat of imminent death or serious bodily injury to himself or another.” *Id.* § 8.05(a). To raise the defense, the evidence must show both compulsion and imminency. *Murkledove v. State*, 437 S.W.3d 17, 26 (Tex. App.—Fort Worth 2014, pet. denied). Compulsion is force or threat of force that would render a person of reasonable firmness incapable of resisting the pressure. TEX. PENAL CODE ANN. § 8.05(c). An imminent threat is a present threat of harm. *See Devine v. State*, 786 S.W.2d 268, 270–71 (Tex. Crim. App. 1989) (discussing meaning of imminent in context of robbery statute). A threat is imminent when:

- (1) the person making the threat intends and is prepared to carry out the threat immediately, and
- (2) the threat is predicated on the threatened person’s failure to commit the charged offense

² In *Brooks v. State*, 323 S.W.3d 893, 902 (Tex. Crim. App. 2010) (plurality op.), the court of criminal appeals concluded there is no meaningful distinction between the legal sufficiency standard set forth in *Jackson v. Virginia*, 443 U.S. 307 (1979), and the factual sufficiency standard set forth in *Clewis v. State*, 922 S.W.2d 126. The court held a reviewing court should apply the *Jackson v. Virginia* standard to determine whether the evidence was sufficient to support each element of a criminal offense the state is required to prove beyond a reasonable doubt, and overruled all “other cases to the contrary, including *Clewis*.” *Brooks*, 323 S.W.3d at 912. Subsequently, in *Matlock v. State*, 392 S.W.3d 662, the court of criminal appeals stated the *Clewis* factual sufficiency standard was still applicable to sufficiency reviews of an affirmative defense. The court distinguished *Brooks*, noting the *Jackson v. Virginia* “constitutional standard of review applies to the elements of an offense that the State must prove beyond a reasonable doubt, but it does not apply to elements of an affirmative defense that the defendant must prove by a preponderance of the evidence.” *Id.* at 667.

immediately. *Cormier v. State*, 540 S.W.3d 185, 190 (Tex. App.—Houston [1st Dist.] 2017, pet. ref’d) (citing *Devine*, 786 S.W.2d at 270–71). Threats of future harm are not sufficient to prove duress. *Id.* at 190–91. A duress defense is unavailable if the defendant intentionally, knowingly, or recklessly placed himself in a situation in which it was probable he would be subjected to compulsion. TEX. PENAL CODE ANN. § 8.05(d); *Guia v. State*, 220 S.W.3d 197, 205 (Tex. App.—Dallas 2007, pet ref’d).

Analysis

Bryant claimed Tavion previously threatened to kill him if he did not participate in the robbery of Johnathan’s residence. He made this claim after Johnathan shot at him, dragged him to the driveway, and held him until the police arrived. Bryant did not testify at trial, and the only evidence offered in support of his duress defense were his own self-serving statements made in the presence of Tara, Rhonda, and Johnathan while waiting for the police to arrive and arrest him. While Bryant told Johnathan “Young Tay was around the corner in a silver Nissan,” there was no evidence showing Tavion was present at the house before, during, or after the robbery and in a position to pose an imminent threat of death or serious bodily injury to Bryant. Although Bryant claimed he believed Tavion would kill him if he did not participate in the robbery, there is no evidence that Tavion made a specific, objective threat to kill or seriously injury Bryant if he did not participate in the robbery. *See Edwards v. State*, 106 S.W.3d 833, 843 (Tex. App.—Dallas 2003, pet ref’d).

Supporting the jury’s implied negative finding on Bryant’s affirmative defense of duress is record evidence that Bryant entered Johnathan’s house by force while holding a gun to Zaylan’s head. In the house, Bryant provided his gun to another robber to hold Tara, Zaylan, and Rhonda hostage. The evidence showed that while Johnathan was being held at gunpoint in the master bedroom by another robber, Bryant demanded that Johnathan tell him where Johnathan’s money and jewelry were, and attempted to take the items from a safe in the closet. When Johnathan

chased the first robber from the house, Bryant struggled with Tara, who was trying to prevent his escape, called her a “bitch,” and threatened to kill her and Zaylan.

Reviewing all of the evidence in a neutral light, we conclude the jury could reasonably have found Bryant was a willing participant in the robbery and failed to prove by a preponderance of the evidence that he was compelled to participate in the robbery by a present threat of imminent death or serious bodily injury to himself or another. We conclude the jury’s implied rejection of Bryant’s duress defense was supported by factually sufficient evidence, and was not so against the great weight and preponderance of the evidence as to be manifestly unjust, conscience-shocking, or clearly biased. *Butcher*, 454 S.W.3d at 20.

Conclusion

We resolve Bryant’s sole issue against him. Accordingly, we affirm the trial court’s judgment.

/Robert M. Fillmore/
ROBERT M. FILLMORE
JUSTICE

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**Court of Appeals
Fifth District of Texas at Dallas**

JUDGMENT

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participating.

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

Judgment entered this 25th day of May, 2018.