

AFFIRM; Opinion Filed December 15, 2020



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

No. 05-19-01006-CR

**LEIGHTON THOMAS THOMPSON, Appellant
V.
THE STATE OF TEXAS, Appellee**

**On Appeal from the 380th Judicial District Court
Collin County, Texas
Trial Court Cause No. 380-81929-2018**

MEMORANDUM OPINION

Before Justices Schenck, Osborne, and Partida-Kipness
Opinion by Justice Schenck

Leighton Thomas Thompson appeals his conviction for murder. In two issues, appellant challenges the legal sufficiency of the evidence to support the trial court's rejection of appellant's claim of self-defense. We affirm the judgment. Because all issues are settled in law, we issue this memorandum opinion. TEX. R. APP. P. 47.4.

BACKGROUND

The following was established by evidence admitted at trial.

Ronald Zuberer lived with Lisa Thompson, his common-law wife of twenty-five years, and appellant, Ms. Thompson's thirty-eight-year-old son. Mr. Zuberer

worked as a mechanic at a car dealership. Ms. Thompson suffered from physical disabilities related to multiple sclerosis. Appellant cared for his mother during the day, cleaned the home, ran errands, laundered most of the clothes, and prepared dinners for Ms. Thompson, Mr. Zuberer, and himself. Mr. Zuberer and appellant shared a hobby of owning and rebuilding motorcycles.

On April 25, 2018, Ms. Thompson called 9-1-1 to report Mr. Zuberer and appellant had argued “and then they were fighting and then my son shot [Mr. Zuberer].” When police arrived, appellant was standing out of the apartment building, and an emotional Ms. Thompson was sitting on the couch next to Mr. Zuberer’s body sitting slumped over on the couch. Appellant complied with police orders to lie on the ground and informed the police that he had left his gun on his bed. After he had been placed in handcuffs, appellant indicated that he had suffered some blows to his face and was unsure if he required medical attention.

Appellant was charged by indictment with one count of murder. Appellant entered a plea of not guilty to the charge and waived his right to a jury trial. After a bench trial, the trial court judge found appellant guilty as charged and sentenced him to 18 years’ imprisonment. Appellant timely filed his notice of appeal.

DISCUSSION

In his first issue, appellant contends the evidence is legally and factually insufficient to support the trial court’s rejection of his self-defense theory that his use of deadly force against Mr. Zuberer was justified. In his second issue, appellant

argues the trial court erred by concluding the evidence supporting his self-defense theory was not credible.

Self-defense is a defense to prosecution under section 2.03 of the penal code. *See* TEX. PENAL CODE ANN. §§ 2.03, 9.02, 9.31, 9.32. A defendant has the burden of producing some evidence to support a claim of self-defense. *London v. State*, 325 S.W.3d 197, 202 (Tex. App.—Dallas 2008, pet. ref'd). The State has the burden of persuasion in disproving self-defense. *Id.* This burden does not require the State to produce evidence refuting the self-defense claim; rather, the burden requires the State to prove its case beyond a reasonable doubt. *Id.*

Self-defense is an issue of fact to be determined by the trier of fact. *See id.*; *Peoples v. State*, No. 05-97-00971-CR, 1998 WL 546168, at *1 (Tex. App.—Dallas Aug. 28, 1998, pet. ref'd) (mem. op., not designated for publication). A trial court is the sole trier of fact, the judge of witness credibility, and the determiner of the weight given to witness testimony. *See Dearborn v. State*, 420 S.W.3d 366, 372–73 (Tex. App.—Houston [14th Dist.] 2014, pet. denied). A verdict of guilty is an implicit finding rejecting the defendant's self-defense theory. *See London*, 325 S.W.3d at 202.

Because the State bears the burden of persuasion to disprove self-defense by establishing its case beyond a reasonable doubt, we review both legal and factual sufficiency challenges to the factfinder's rejection of such a defense under the *Jackson v. Virginia* standard. *See Smith v. State*, 355 S.W.3d 138, 145 (Tex. App.—

Houston [1st Dist.] 2011, pet. ref'd) (citing *Jackson v. Virginia*, 443 U.S. 307 (1979)). Under this standard, evidence is insufficient to support a conviction if, considering all the evidence in the record in the light most favorable to the verdict, no rational factfinder could have found that each essential element of the charged offense was proven beyond a reasonable doubt. *Id.* at 144. Viewed in the light most favorable to the verdict, the evidence is insufficient under this standard when either: (1) the record contains no evidence, or merely a “modicum” of evidence, probative of an element of the offense; or (2) the evidence conclusively establishes a reasonable doubt. *Id.* An appellate court may not re-evaluate the weight and credibility of the record evidence and thereby substitute its own judgment for that of the factfinder. *Id.*

A person commits murder if he intentionally or knowingly causes the death of an individual, or intends to cause serious bodily injury and commits an act clearly dangerous to human life that causes the death of an individual. *See* PENAL §§ 19.02(b)(1), 19.02(b)(2). The penal code, however, provides that 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. *Id.* § 9.31(a). Deadly force in self-defense is justified when a person reasonably believes the force is immediately necessary to protect the actor against the other’s use or attempted use of unlawful deadly force or

to prevent the other's imminent commission of aggravated kidnapping, murder, sexual assault, aggravated sexual assault, robbery, or aggravated robbery. *Id.* § 9.32.

A "reasonable belief" is defined as one that would be held by "an ordinary and prudent man in the same circumstances as the actor." *Id.* § 1.07(a)(42). "Deadly force" is force "intended or known by the actor to cause, or in the manner of its use or intended use is capable of causing, death or serious bodily injury." *Id.* § 9.01(3). "Serious bodily injury" is an injury that creates a "substantial risk of death or that causes death, serious permanent disfigurement, or protracted loss or impairment of the function of any bodily member or organ." *Id.* § 1.07(a)(46).

The actor's belief that the force or deadly force was "immediately necessary" is presumed to be reasonable if the actor (1) knew or had reason to believe that the person against whom the force was used was committing or attempting to commit murder; (2) did not provoke the person against whom the force was used; and (3) was not otherwise engaged in criminal activity. *See id.* §§ 9.31(a)(1)(C), (2), (3); 9.31(b)(1)(C),(2),(3). The use of force against another is not justified in response to verbal provocation alone. *See id.* § 9.31(b)(1).

Appellant urges that the record contains the following evidence to support a finding that he shot Mr. Zuberer in self-defense: Mr. Zuberer was sitting on the couch next to Ms. Thompson with appellant sitting on her other side when Mr. Zuberer and appellant began arguing over household finances; Mr. Zuberer physically assaulted appellant; Mr. Zuberer was a large and strong man who inflicted

physical injuries on appellant; Mr. Zuberer's behavior was unpredictable when he was taking his medication for treatment of his schizophrenia, depression, and paranoia; appellant believed his life was in danger; and there was blood spatter on the ceiling and on the wall behind Mr. Zuberer. Appellant argues he and his mother were the only witnesses to the events and that both testified there was a physical altercation between appellant and Mr. Zuberer and that Mr. Zuberer was the aggressor.¹

Appellant contends that his version of events remained consistent that he used non-lethal force to retreat and protect himself at first and that when those attempts were unsuccessful and realized Mr. Zuberer was not in full control of himself, appellant defended himself with deadly force. In support of his version of events, appellant points to the evidence of the injuries he sustained and the direction of the blood spatter on the wall and ceiling, which he argues indicated the direction of the bullets was from someone shooting below Mr. Zuberer in a defensive position.

By his own testimony, appellant admits that he intentionally shot Mr. Zuberer with a firearm and that shooting someone with a firearm is an act clearly dangerous to human life. On the 9-1-1 call, Ms. Thompson reported appellant had shot Mr. Zuberer. Thus, the evidence establishes the elements of murder. *See* PENAL §§ 19.02(b)(1), 19.02(b)(2).

¹ On cross-examination, when asked, "Do you remember who hit who first," Ms. Thompson said, "I don't know, except that I don't—my son would not have hit Ron."

The evidence relating to the issue of self-defense is largely comprised of witness testimony concerning an ongoing and physical altercation. The trial court's decision to reject appellant's defensive claims ultimately hinged on the credibility of the witnesses concerning an extended and escalating course of events. As the factfinder, the trial judge is entitled to judge the credibility of the witnesses, and can choose to believe all, some, or none of the testimony presented by the parties. *See Dearborn*, 420 S.W.3d at 372; *Smith*, 355 S.W.3d at 146. The only evidence in the record that a factfinder could rely on that appellant knew or had reason to believe that his life was in danger was appellant's and Ms. Thompson's testimony. The evidence in the record includes the testimony of the lead detective that blood spatter on the ceiling did not indicate whether appellant was beneath Mr. Zuberer when he shot him.

The record also includes photographs of appellant's injuries, which included red marks on his face and inside his mouth and bruising on the right side of his abdomen. Additionally, the record includes appellant's testimony that the gun he used to shoot Mr. Zuberer "several" times was a single action that required him to physically cock the hammer back each time he fired the gun. On rebuttal, one of the police detectives who spoke to Ms. Thompson at the scene of the crime testified. According to that detective, Ms. Thompson stated that she did not recall Mr. Zuberer getting up from where he was sitting on the couch, but she did remember her son got up and "went across [her]" as she was sitting between appellant and Mr. Zuberer.

While the issue may have been close, the trial judge chose not to believe appellant was justified in using force against Mr. Zuberer and neither Ms. Thompson's nor appellant's testimony, in light of the other evidence presented at trial, renders the evidence in this case insufficient to support the trial judge's verdict.

We overrule appellant's first and second issues.

CONCLUSION

We affirm the trial court's judgment.

/David J. Schenck/

DAVID J. SCHENCK
JUSTICE

DO NOT PUBLISH
Tex. R. App. P. 47
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**Court of Appeals
Fifth District of Texas at Dallas**

JUDGMENT

LEIGHTON THOMAS
THOMPSON, Appellant

No. 05-19-01006-CR V.

THE STATE OF TEXAS, Appellee

On Appeal from the 380th Judicial
District Court, Collin County, Texas
Trial Court Cause No. 380-81929-
2018.

Opinion delivered by Justice
Schenck. Justices Osborne and
Partida-Kipness participating.

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

Judgment entered this 15th day of December, 2020.