**Opinion issued August 11, 2020**

**In The**

# Court of Appeals

**For The**

# First District of Texas

**NO. 01-19-00523-CR**

**CARLOS DELAROSA, Appellant**

**V.**

**THE STATE OF TEXAS, Appellee**

**On Appeal from the 179th District Court**
**Harris County, Texas**
**Trial Court Case No. 1624729**

## MEMORANDUM OPINION

A jury convicted Carlos Delarosa of the third-degree felony offense of retaliation against a public servant. *See* TEX. PENAL CODE § 36.06(a)(1)(A), (c). The trial court sentenced Delarosa to 25 years' confinement in the Institutional Division

of the Texas Department of Justice. In a single issue, Delarosa contends that the evidence is legally insufficient to support his conviction for retaliation. We affirm.

## Background

On July 6, 2018, Harris County Jail Detention Officer C. Lake, the complainant, was assigned the duty of a rover. As a rover, one of Lake's duties was to routinely search inmates and their jail cells for contraband. At the beginning of the cell search, Lake instructed all inmates, including Delarosa, to step outside of their cells in front of the doors until the rovers completed the search. After completing the search of a nearby cell, Lake observed Delarosa run inside his cell and then run back out. For safety reasons, she escorted and placed Delarosa in a safety vestibule. Delarosa then became aggressive and yelled profanities at Lake. Lake searched his cell and found contraband in it.[1]

Lake and other rovers escorted Delarosa from the safety vestibule to his cell. Delarosa's aggression resumed and he continued swearing at Lake. Lake removed Delarosa from his cell and handcuffed him because he was going to be placed in a separation cell for making "unauthorized contact" with the staff.[2] She also told him

[1] At trial, Lake was unable to recall the type of contraband she found in Delarosa's cell.

[2] Lake testified that "unauthorized contact" means "name-calling."

that she was going to write him up. Delarosa became even more "aggressive" and "agitated."

As Lake was transporting Delarosa to the separation cell, he told her, "You better hope I don't see you on the streets with my .45." Lake testified that she understood the term ".45" to mean a handgun. She also testified that she believed that Delarosa was threatening to shoot her when he was released from jail. She also believed that Delarosa made that threat to her because she was carrying out her duties as a public servant. Lake reported the threat to her supervisor, Sergeant C. Crouch. After investigating the threat, Crouch contacted the District Attorney's Office.

The State charged Delarosa with retaliation against Lake. *See* TEX. PENAL CODE § 36.06(a)(1)(A). Delarosa pleaded not guilty to the charge. The jury found Delarosa guilty of retaliation. The trial court sentenced Delarosa to 25 years' imprisonment. Delarosa appealed.

**Sufficiency of the Evidence**

Delarosa contends that the evidence is legally insufficient to support his conviction for retaliation against Lake because his statement—"You better hope I don't see you on the streets with my .45"—is too vague or ambiguous to be perceived as a threat to harm her. He contends that his statement was not a threat to shoot Lake; instead, it "could be interpreted to mean that [Delarosa] did not want to see [Lake]

in the streets in possession of [his] .45" caliber gun.[3] He also argues that the statement was merely "puffing." In response, the State argues that the evidence is legally sufficient to support Delarosa's conviction and that it need not disprove all reasonable alternative hypotheses (i.e., "puffing") that are inconsistent with the jury's finding of Delarosa's guilt.

## A. Standard of review

We review Delarosa's challenge to the sufficiency of the evidence under the standard enunciated in *Jackson v. Virginia*, 443 U.S. 307 (1979). *See Cary v. State*, 507 S.W.3d 761, 765–66 (Tex. Crim. App. 2016). Under the *Jackson* standard, we examine all the evidence in the light most favorable to the verdict and determine whether any rational trier of fact could have found the essential elements of the offense beyond a reasonable doubt. *Jackson*, 443 U.S. at 319; *Walker v. State*, 594 S.W.3d 330, 335 (Tex. Crim. App. 2020). The jury is the sole judge of the credibility of witnesses and the weight to give testimony. *Montgomery v. State*, 369 S.W.3d 188, 192 (Tex. Crim. App. 2012). The jury may reasonably infer facts from the evidence presented, credit the witnesses it chooses, disbelieve any or all of the

[3] Delarosa also challenges the sufficiency of the evidence in light of Lake's inability to recall the type of contraband that was found in Delarosa's cell. We do not consider this challenge on appeal because this was not an element of the offense that had to be proven beyond a reasonable doubt at trial. He also argues that Lake was retaliating against him by threatening to "write him up" without finding contraband, which is also not an element of the charged offense.

evidence or testimony proffered, and weigh the evidence as it sees fit. *See Febus v. State*, 542 S.W.3d 568, 572 (Tex. Crim. App. 2018); *Galvan-Cerna v. State*, 509 S.W.3d 398, 403 (Tex. App.—Houston [1st Dist.] 2014, no pet.).

**B. Applicable law**

To prove the offense of retaliation as alleged in the indictment, the State was required to prove beyond a reasonable doubt that Delarosa intentionally or knowingly threatened to harm Lake by an unlawful act in retaliation for or on account of her service as a public servant. *See* TEX. PENAL CODE § 36.06(a)(1)(A). The underlying purpose of section 36.06 is to "encourage a certain class of citizens to perform vital public duties without fear of retribution." *Doyle v. State*, 661 S.W.2d 726, 729 (Tex. Crim. App. 1983) (per curiam).

Section 36.06 does not require that the threatened retaliatory harm be imminent, nor does it require that the actor actually intend to carry out his threat. *Dues v. State*, 634 S.W.2d 304, 305 (Tex. Crim. App. 1982); *Coward v. State*, 931 S.W.2d 386, 389 (Tex. App.—Houston [14th Dist.] 1996, no pet.). We may infer retaliatory intent from Delarosa's acts, words, or conduct considering that our "focus is on whether the conduct is done with an intent to effect the result specified" in section 36.06. *Dues*, 634 S.W.2d at 305; *Herrera v. State*, 915 S.W.2d 94, 98 (Tex. App.—San Antonio 1996, no pet.) (citing *Alvarado v. State*, 704 S.W.2d 36, 39 (Tex. Crim. App. 1985) (op. on reh'g) (en banc)).

### C. The evidence is legally sufficient to show that Delarosa threatened to harm Lake in retaliation for her service as a public servant

Although Delarosa asserts that his statement could have been interpreted to mean that he did not want Lake to catch him "in possession" of a handgun when he was released and describes it as mere "puffing," the jury could have inferred from the totality of the circumstances that Delarosa's statement was a threat to harm Lake. *See Coleman v. State*, 113 S.W.3d 496, 502 (Tex. App.—Houston [1st Dist.] 2003), *aff'd on other grounds*, 145 S.W.3d 649 (Tex. Crim. App. 2004) (concluding that evidence is not insufficient merely because appellant offered a different explanation for the facts). The State need not exclude every other reasonable hypothesis except Delarosa's guilt. *See Wise v. State*, 364 S.W.3d 900, 903 (Tex. Crim. App. 2012) (rejecting proof of all reasonable alternative hypotheses and recognizing the court's primary inquiry in a legal-sufficiency challenge is "whether the inferences necessary to establish guilt are reasonable based upon the cumulative force of all the evidence when considered in the light most favorable to the verdict"); *Stoutner v. State*, 36 S.W.3d 716, 722 (Tex. App.—Houston [1st Dist.] 2001, pet. ref'd) (op. on reh'g) (citation omitted).

Delarosa's actions are susceptible to more than one interpretation, but the jury resolved that question against Delarosa. The record shows that Delarosa made this statement after Lake, while performing her duties as a detention officer, placed him in a safety vestibule for violating jail policies during the cell search, found

contraband in his cell, and informed him that he was going to be written up and transferred to a separation cell. Delarosa also cursed Lake and appeared aggressive as she was performing her duties. Based on these circumstances, the jury could have inferred that Delarosa threatened to shoot Lake in retaliation for her service as a detention officer. Further, according to her own testimony, Lake construed Delarosa's statement as a threat to shoot her upon his release. The jury was free to accept or reject Lake's interpretation of Delarosa's statement. *See Febus*, 542 S.W.3d at 572.

When considered in the light most favorable to the verdict, we conclude there is legally sufficient evidence to support the jury's finding interpreting Delarosa's statement as a threat to harm Lake. *See, e.g.*, *Lebleu v. State*, 192 S.W.3d 205, 209 (Tex. App.—Houston [14th Dist.] 2006, pet. ref'd) (holding that evidence was legally sufficient to support "threat of harm" element when appellant stated, "Maybe he should just put a stick of dynamite in [Judge Hufstetler's] mouth and let the judge see what it's like to have somebody control your life" because appellant was agitated and extremely dissatisfied with the judge's rulings); *Hastings v. State*, 82 S.W.3d 493, 495–98 (Tex. App.—Austin 2002, pet. ref'd) (concluding evidence was legally sufficient to prove that defendant made threats of bodily harm where the defendant told the police, "You better watch out, you don't know who you're dealing with. Once I'm free, I'm going to get you."); *Wheeler v. State*, 975 S.W.2d 793, 796 (Tex.

App.—Beaumont 1998, no pet.) (determining evidence was legally sufficient to support retaliation conviction when officer testified that appellant threatened him following an arrest on outstanding warrant).

## Conclusion

We affirm the trial court's judgment.

Sarah Beth Landau
Justice

Panel consists of Justices Keyes, Kelly, and Landau.

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