



Fourth Court of Appeals
San Antonio, Texas

MEMORANDUM OPINION

No. 04-16-00478-CR

Jeremy Michael **STRAUSER**,
Appellant

v.

The **STATE** of Texas,
Appellee

From the County Court at Law No. 7, Bexar County, Texas
Trial Court No. 514924
Honorable Genie Wright, Judge Presiding

Opinion by: Karen Angelini, Justice

Sitting: Sandee Bryan Marion, Chief Justice
Karen Angelini, Justice
Patricia O. Alvarez, Justice

Delivered and Filed: October 18, 2017

AFFIRMED

Jeremy Michael Strauser was charged by information with assault bodily injury family. After a jury trial, he was found guilty and sentenced to one year of confinement in jail. His sentence was suspended, and he was placed on community supervision for two years. On appeal, he argues that the evidence is legally and factually insufficient to rebut the presumption that he acted in self-defense and out of necessity. We affirm.

STANDARD OF REVIEW

The parties dispute which standard of review applies to this appeal. Strauser argues legal and factual sufficiency standards of review apply, while the State argues the factual-sufficiency standard is “extinct” and only the *Jackson v. Virginia* sufficiency standard applies.

In *Brooks v. State*, 323 S.W.3d 893, 902 (Tex. Crim. App. 2010), the court of criminal appeals explained there was “no meaningful distinction between the *Jackson v. Virginia* legal-sufficiency standard and the *Clewis* factual-sufficiency standard” and that “these two standards have become indistinguishable.” Therefore, the court of criminal appeals held “that the *Jackson v. Virginia* standard is the only standard that a reviewing court should apply in determining whether the evidence is sufficient to support each element of a criminal offense that the State is required to prove beyond a reasonable doubt.” *Id.* at 912. The court then overruled “[a]ll other cases to the contrary, including *Clewis*.” *Id.*

Three years later, the court of criminal appeals explained that the *Clewis* factual sufficiency standard was still applicable to sufficiency reviews of the rejection of an affirmative defense. *Matlock v. State*, 392 S.W.3d 662, 664 (Tex. Crim. App. 2013). The court distinguished *Brooks*, noting that the *Jackson v. Virginia* “constitutional standard of review applies to elements of an offense that the State must prove beyond a reasonable doubt, but . . . does not apply to elements of an affirmative defense that the defendant must prove by a preponderance of the evidence.” *Matlock*, 392 S.W.3d at 667.

The instant case, however, does not involve the rejection of an affirmative defense. Self-defense and necessity are defenses rather than affirmative defenses. *See Bowen v. State*, 162 S.W.3d 226, 229 (Tex. Crim. App. 2005) (stating that necessity is a defense); *Zuliani v. State*, 97 S.W.3d 589, 594 (Tex. Crim. App. 2003) (explaining that self-defense is “classified as defense, as opposed to an affirmative defense”); *see also* TEX. PENAL CODE ANN. §§ 9.02, 9.22, 9.31 (West

2011). Thus, the *Clewis* factual-sufficiency standard does not apply in this case. *See Pridgen v. State*, 12-13-00136-CR, 2014 WL 6792583, at *1 (Tex. App.—Tyler 2014, pet. ref'd) (explaining *Matlock* did not apply because self-defense is a defense and not an affirmative defense).

Finally, Strauser argues that in conducting a review of the evidence, we should consider “the existence of all alternative reasonable hypotheses.” However, the reasonable-alternative-hypothesis theory does not apply to an evidence-sufficiency review. *See Wise v. State*, 364 S.W.3d 900, 903 (Tex. Crim. App. 2012) (“For the evidence to be sufficient, the State need not disprove all reasonable alternative hypotheses that are inconsistent with the defendant’s guilt.”); *see also Ramsey v. State*, 473 S.W.3d 805, 811 (Tex. Crim. App. 2015).

We therefore conclude the *Jackson v. Virginia* sufficiency standard applies in this case. In such a review, we view all the evidence in the light most favorable to the verdict to determine whether any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. *Adames v. State*, 353 S.W.3d 854, 860 (Tex. Crim. App. 2011). This standard “recognizes the trier of fact’s role as the sole judge of the weight and credibility of the evidence after drawing reasonable inferences from the evidence.” *Id.* Therefore, on appellate review, we determine whether based on “cumulative force of all the evidence” the necessary inferences made by the trier of fact are reasonable. *Id.* We conduct this constitutional review by measuring the evidentiary sufficiency with “explicit reference to the substantive elements of the criminal offense as defined by state law.” *Id.*

DISCUSSION

Section 9.31 of the Texas Penal Code provides that “a person is justified in using force against another when and to the degree [that person] reasonably believes the force is immediately necessary to protect [himself] against [another person’s] use or attempted use of unlawful force.” TEX. PENAL CODE ANN. § 9.31(a) (West 2011). Such use of force against another is not justified

“in response to verbal provocation alone.” *Id.* § 9.31(b)(1). Section 9.22 provides that a person’s conduct is justified if “the actor reasonably believes the conduct is immediately necessary to avoid imminent harm.” *Id.* § 9.22.

Once a defendant produces some evidence raising the issue of self-defense or necessity, the State bears the burden of persuasion to disprove the raised defense. *Zuliani v. State*, 97 S.W.3d 589, 594 (Tex. Crim. App. 2003). “The burden of persuasion is not one that requires the production of evidence, rather it requires only that the State prove its case beyond a reasonable doubt.” *Id.* “When a jury finds the defendant guilty, there is an implicit finding against the defensive theory.” *Id.*

At trial, both Strauser and the complainant, twenty-four-year-old Jordan W., testified. Jordan W. testified that on the day of the incident, December 11, 2014, she had been in a relationship with Strauser for two years and was the mother of his three-month-old child. Her birthday had been on December 10, 2014, the day before the incident. According to Jordan W., she was upset because Strauser had made an appointment on her birthday to color the tattoo on his right arm. So, instead of going out on her birthday, she and Strauser had dinner plans the day after, December 11, 2014. When Jordan W. arrived at the home of Strauser’s parents at 7:15 p.m. on December 11, 2014, Strauser was still asleep. Jordan W. testified that she took the baby inside the home, gave the baby to Strauser’s parents, and then waited for Strauser to get ready for dinner. Jordan W. described Strauser as being “a little agitated, grouchy.” According to Jordan W., she was anxious to leave because Strauser’s parents wanted them back by 9:30 p.m.

Strauser and Jordan W. left to go to the restaurant. Strauser was driving. They had just left the neighborhood when Strauser asked why she was quiet and upset. Jordan W. replied that she was not upset. Jordan W. testified that Strauser then became “a little more agitated.” Jordan W. would not tell Strauser why she was upset or whether she was upset. Strauser kept asking her what

was wrong and why she was in a bad mood. Jordan W. testified, “I think that I was being a little quiet because we were already late, and it was a late birthday dinner, and we only had a certain amount of time.” Jordan W. claimed that she was not upset about Strauser not buying her a present: “I wasn’t – the material stuff doesn’t really matter to me. It was just that I had, you know, his three-month-old child and he – instead of doing something, thinking of me enough on my birthday, he made an appointment instead.”

Strauser continued to ask Jordan W. why she was upset. Jordan W. testified that she eventually replied, “Well, you really want to know why I’m upset? It’s because of this!” Jordan W. then “backhanded his tattoo” on his right forearm.

I kind of smacked it just to show, like, this is what I’m angry about. I didn’t do it to hurt him. I just felt, you know, pushed a little bit and upset at that point. I was kind of upset so – I didn’t do it to hurt him. I just – that’s wh[at] I was upset about

Jordan W. testified that in response, Strauser “immediately just punched me closed fist in the eye, left eye.” Jordan W.’s head then hit the window and “kind of bounced off of it.” According to Jordan W., she was “in shock for a second” and “didn’t really know what happened.” Jordan W. was worried that her head was bleeding and yelled, “[W]hat are you doing?” Jordan W. testified that Strauser then “reached over and closed fist punched [her] again in the lip.” She began to bleed from the mouth. Jordan W. testified that to prevent herself from being hit again, she put her hands up and put her head on the dashboard. She testified she could taste blood in her mouth, which began dripping once she put her head down. Strauser then hit her a couple of more times to the back of her head with his closed fist. Jordan W. testified she was terrified and “just didn’t move for a while until it kept happening.” “[A]t that point, I tried to push him off me and kind of do whatever I could to get him away.” Jordan W. testified that she then scratched Strauser “trying to get him off [her] in any way possible.”

Strauser parked in the back of a parking lot of a retail store. Strauser “kept yelling, ‘[W]hy would you make me do this? Why would you do this?’” Jordan W. testified that she was “dizzy” and felt like she could not “really breathe.” She testified she did not get out of the car because she did not think that she could. “I was terrified. I thought that if I did anything I would make him more angry, and that maybe my son would be without a mom.” Jordan W. stayed in the car with her head down on the dashboard. Strauser grabbed her “by the back of the hair, pulled [her] up and spit in [her] face, and then started choking [her].” Jordan W.’s vision “kind of went black for a little while.” Strauser then let her go and got out of the car. According to Jordan W., Strauser was in a rage and kept yelling the same thing over and over, “You stupid b----, why did you make me do this? Why did you do this? This is your fault.”

Jordan W. had her head down and saw him out of the corner of her eye pacing back and forth. Strauser got back into the car and drove them back to his parent’s home. His parents were outside. Strauser got out of the car and was still yelling. Jordan W. got out of the car and was still dizzy. According to Jordan W., Strauser’s mom saw her and was “in hysterics.” “She was crying and apologizing.” Jordan W. went inside the house, and Strauser’s brother took her by her hand to the bathroom. Jordan W. testified that when she saw herself in the mirror, her eye was “completely swollen over.” She had “blood coming out of [her] mouth and [her] lip was puffed up.” According to Jordan W., she then “just started crying.” Strauser’s brother called the police.

Jordan W. was adamant that she never attempted to pull the steering wheel of the car and did not attempt to crash the car. She also testified that she did not bite Strauser. She admitted that she scratched him trying to push him away from her.

Photographs and medical records admitted in evidence show the injuries suffered by Jordan W.

Bexar County Deputy Sheriff Veronica Casanova testified that she was on patrol December 11, 2014, when she received a call from dispatch at about 8:30 p.m. Casanova testified that she talked to Strauser first, who was outside in the yard. “If I remember correctly he stated that [he] and his girlfriend got into an argument because it was her birthday, and he didn’t buy her a gift or something to that effect.” Strauser told Casanova that when he and Jordan W. began arguing in the car, Jordan W. “slapped him in the arm, you know, for something he said, and he turned around and they started fighting.” Strauser told Casanova he had “just gotten a new tattoo on his arm.” Casanova testified that Jordan W. was “upset” and “crying,” and “had a black eye to the left eye.” Both Jordan W. and Strauser sought medical attention. Strauser claimed “he was hurt from getting hit on the arm on his tattoo.” Casanova testified that her investigation led her to conclude Jordan W. had been “the initial aggressor.” However, Casanova did not arrest Jordan W., “[b]ecause [Casanova] didn’t believe at the time that a slap on the arm justified [Jordan W.] getting punched in the face.”

Strauser also testified to what happened on December 11, 2014. According to Strauser, Jordan W. had been upset because he had not gotten her a birthday present, and they began fighting as soon as they got into the car. Strauser asked Jordan W., “[W]hy are you going to ruin the night? I’m taking you out.” Jordan W. then “smacked [him] in the face.” Strauser asked her, “[W]hy are you doing this?” Strauser testified that he believed “it was the brand new tattoo coloring that she was mad at and she took her nails and scratched it straight down twice.” Strauser testified, “I don’t think I’ve felt more pain in my life.” “After she smacked my face, she scratched my arm, [and] scratched my chest.” Strauser testified that Jordan W. also bit him at some point. He also claimed Jordan W. had grabbed the wheel of the car: “Actually before she scratched [my arm], she grabbed at my wheel” Strauser testified that he could not “put to words exactly what was going on. It was scary, and [he] knew [he] had to do whatever [he] could to stop it.” Strauser testified, he

reacted “immediately” because he “didn’t want to die.” While he was driving, he “pushed her off of [him].” Strauser claimed he “would never try to hurt her.” He just “wanted to stop the fight.” He testified that he acted in self-defense and that he believed he had to act to protect himself. He claimed his actions were “necessary.” On cross-examination, Strauser denied having punched Jordan W. He stated he caused her injuries “[w]ith the palm of [his] hand.” He also admitted that he is trained in MMA fighting.

In viewing all the evidence in the light most favorable to the verdict, we conclude a rational jury could reasonably reject Strauser’s claim of self-defense and necessity, and find that he committed the offense of assault bodily injury family beyond a reasonable doubt. A jury can choose to believe all, some, or none of the testimony presented by the parties. *Baez v. State*, 486 S.W.3d 592, 594 (Tex. App.—San Antonio 2016, pet. ref’d). Because the jury has the authority to judge the credibility of witnesses, the “statements of the defendant and his witnesses do not conclusively prove a claim of self-defense or defense of a third party.” *Smith v. State*, 355 S.W.3d 138, 146 (Tex. App.—Houston [1st Dist.] 2011, pet. ref’d); *see also Valverde v. State*, 490 S.W.3d 526, 529 (Tex. App.—San Antonio 2016, pet. ref’d) (noting that a “defendant’s testimony does not conclusively prove a claim of self-defense because the jury [can] reject the testimony”). Therefore, the jury was free in this case to believe Jordan W.’s version of events and reject Strauser’s version. As an appellate court, we must “defer to the jury’s credibility and weight determinations because the jury is the sole judge of the witnesses’ credibility and the weight to be given their testimony.” *Brooks*, 323 S.W.3d at 899.

Strauser puts much emphasis on the fact that Jordan W. admitted to having hit him on the arm first. However, even if a victim starts the altercation, the question remains whether the person claiming self-defense or necessity used only such force as was necessary. *See* TEX. PENAL CODE ANN. § 9.22 (West 2011) (stating that a person’s conduct is justified under the defense of necessity

if “the actor reasonably believes the conduct is immediately necessary to avoid imminent harm”); *id.* § 9.31 (stating that under 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”). We hold the evidence is sufficient to support Strauser’s conviction and therefore affirm the judgment of the trial court.

Karen Angelini, Justice

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