

In The
Court of Appeals
Ninth District of Texas at Beaumont

NO. 09-16-00352-CR

GERMAINE JOSEPH JACKSON, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the 252nd District Court
Jefferson County, Texas
Trial Cause No. 14-21007

MEMORANDUM OPINION

A jury convicted appellant Germaine Joseph Jackson of murder and assessed punishment at twenty-five years of imprisonment. In two appellate issues, Jackson argues that the evidence was insufficient to support the verdict and that the trial court abused its discretion by denying his motion for new trial. We affirm the trial court's judgment.

BACKGROUND

Frederick Brown testified that on September 5, 2014, he saw James Carry, also known as Feather, at a convenience store and “flagged him down” to get a ride from him. Brown testified that Jackson was sitting in the front passenger seat, and Brown sat directly behind Jackson. According to Brown, Carry was arguing with someone on the phone. Carry told the person with whom he was speaking to meet him at his aunt’s home. Brown explained that Jackson told Carry that the person Carry had been arguing with was “too big to be fighting on you,” and “[i]f they come to fight you, . . . I’m busting.” According to Brown, “I’m busting” means that protection, such as a gun or stick, would be involved.

Carry testified that on the day in question, he was driving around with Jackson, and they eventually picked up Brown. According to Carry, while they were riding around, Carry was on the phone arguing with the victim, who wanted to fight Carry. Carry testified that he, Jackson, and Brown continued to ride around, and then pulled into the yard of his house. Eventually some cars arrived, and an acquaintance of Carry’s attempted to purchase synthetic marijuana from him. Carry explained that before the transaction was completed, the victim “ran up on me and start[ed] hitting me through the car.” Carry estimated that the victim struck his face approximately four times, and Carry explained that he attempted to get out of the car, but could not

do so because the victim was leaning on the door. Carry testified that he did not see a gun or knife in the victim's hands. According to Carry, he heard one shot when Jackson fired Carry's gun. Carry explained that he later learned that the victim had died. Carry testified that he believed Jackson was trying to protect him when he fired the gun.

Rayland Chaison, also known as C-Ray, testified that the victim was his second cousin. According to Chaison, on September 5, 2014, the victim told Chaison that he intended to fight Carry. Chaison testified that he believed the fight "was supposed to be a fistfight."

Chaison explained that when the car he was a passenger in pulled up to the scene, he saw the victim swinging his fist into a car, heard a gunshot, and then saw the victim running away from the car. Chaison testified that he and his friend drove off after hearing the shot, and after receiving a call stating where the victim was, they drove to the EMS station. According to Chaison, the victim did not carry a gun, knife, or bat. Chaison testified that he gave a written statement to the police, but during cross-examination, Chaison admitted that he initially told police that he was at home when the incident occurred.

Detective Crystal Holmes of the Beaumont Police Department testified that on September 5, 2014, she and another detective were following up on an unrelated

case when they were notified of an incident involving shots fired and learned that the victim had been taken to an EMS station. Holmes testified that she went to the EMS station, and upon arriving, she saw a large crowd surrounding the station and the victim lying under the awning, being tended to by EMS personnel. According to Holmes, the victim was later transported to the hospital, where he was pronounced dead. Holmes explained that officers who were present at the EMS station identified and detained several witnesses, obtained statements from them, and identified Jackson as a suspect.

Holmes testified that Jackson ultimately turned himself in several weeks later and gave a written and video statement with his attorney present. A copy of Jackson's written statement was admitted into evidence as State's exhibit one, and a recording of the interview with Jackson was admitted as State's exhibit two. Holmes testified regarding the contents of Jackson's statement. According to Holmes, Jackson's written statement recounted as follows, in pertinent part:

James [Carry] drove to his house He pulled up front like we always do and came to a stop. I was rolling a blunt when several vehicles pulled up and surrounded us. I guess we were being followed. A white car pulled up beside us, and a dude came running up to the driver's window from it. A gold color car pulled up and a black SUV pulled up in front of us. It was slanted sideways. We couldn't have moved our car . . . because we were blocked in. At the same time, the dude from the white car was running up to the window, [and] so was the dude from the black SUV. I later learned that his name was [the victim's name]. I do not know [the victim] personally. Both of the dudes started swinging on

James, and he was ducking and leaning over while trying not to get hit. At the same time, I saw several other dudes bailing out of the black SUV. . . . I thought that I also saw something chrome in one of their hands, which I thought was a gun. I was afraid that we were about to get shot. I grabbed James's gun and fired one round through the open driver's window. . . . I didn't mean to shoot nobody. I just wanted them to get away.

According to Holmes, Jackson never stated that he saw the victim with a gun or any type of weapon. The video recording of Jackson's statement was played for the jury. Holmes testified that during his videotaped statement, Jackson never asserted self-defense or stated that he needed to fire the gun to protect Carry but that Jackson said he was afraid they were about to get shot. During cross-examination, Holmes testified that someone could potentially cause serious bodily injury or death with their bare hands.

Dr. John Wayne, a forensic pathologist, testified that he performed an autopsy on the victim's body. Wayne determined that the cause of the victim's death was a perforated gunshot wound to the torso, and the manner of death was homicide.

After the State rested, Jackson's counsel moved for a directed verdict, contending that all of the evidence points to Jackson having acted in self-defense because he feared for his life, and that Jackson "was protecting both himself and his friend from a group of attackers." The trial judge denied the motion, and the defense rested. As noted above, the jury found Jackson guilty and assessed punishment at

twenty-five years of imprisonment. Jackson also filed a motion for new trial, which the trial court denied. Jackson then filed this appeal.

ISSUE ONE

In his first issue, Jackson argues that the evidence was legally insufficient to support his conviction. Specifically, Jackson asserts that the evidence overwhelmingly supported his defensive theories of self-defense and defense of a third party. When evaluating the sufficiency of the evidence, we assess all the evidence in the light most favorable to the prosecution to determine whether any rational trier of fact could find the essential elements of the crime beyond a reasonable doubt. *Jackson v. Virginia*, 443 U.S. 307, 319 (1979); *Hooper v. State*, 214 S.W.3d 9, 13 (Tex. Crim. App. 2007). “Circumstantial evidence is as probative as direct evidence in establishing the guilt of an actor, and circumstantial evidence alone can be sufficient to establish guilt.” *Hooper*, 214 S.W.3d at 13. We “must give deference to ‘the responsibility of the trier of fact to fairly resolve conflicts in testimony, to weigh the evidence, and to draw reasonable inferences from basic facts to ultimate facts.’” *Id.* (quoting *Jackson*, 443 U.S. at 319). The fact finder is entitled to judge the witnesses’ credibility and choose to believe all, some, or none of their testimony. *Chambers v. State*, 805 S.W.2d 459, 461 (Tex. Crim. App. 1991).

A person commits the offense of murder if he “intends to cause serious bodily injury and commits an act clearly dangerous to human life that causes the death of an individual[.]” Tex. Penal Code Ann. § 19.02(b)(2) (West 2011). In this case, the indictment alleged that Jackson intended to cause serious bodily injury to the victim, and did cause the victim’s death, by committing an act clearly dangerous to human life, to-wit, shooting a gun in the direction of the victim. A firearm is statutorily defined as a deadly weapon. Tex. Penal Code Ann. § 1.07(17)(A) (West Supp. 2016). “The jury may infer the intent to kill from the use of a deadly weapon unless it would not be reasonable to infer that death or serious bodily injury could result from the use of the weapon.” *Jones v. State*, 944 S.W.2d 642, 647 (Tex. Crim. App. 1996). A jury may consider events that occurred before, during, and after the commission of the offense. *Pitonyak v. State*, 253 S.W.3d 834, 844 (Tex. App.—Austin 2008, pet. ref’d).

A defendant bears the burden of producing sufficient evidence to support the defenses of self-defense and defense of a third person. Once that burden is met, the burden then shifts to the State to disprove those defenses; that is, the State is required to prove, beyond a reasonable doubt, that the defendant did not act in self-defense or in defense of a third person. *See Zuliani v. State*, 97 S.W.3d 589, 594–95 (Tex. Crim. App. 2003); *Saxton v. State*, 804 S.W.2d 910, 913 (Tex. Crim. App. 1991).

However, “[t]he 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.” *Zuliani*, 97 S.W.3d at 594. “When a jury finds the defendant guilty, there is an implicit finding against the defensive theory.” *Id.*

Self-defense and defense of a third person both require that the actor reasonably believe there is an immediate need to act. *Henley v. State*, 493 S.W.3d 77, 89 (Tex. Crim. App. 2016). With respect to a claim of self-defense, a person is justified in using force against another if the person reasonably believes that the use of force is “immediately necessary” to protect himself against the other’s use or attempted use of unlawful force. Tex. Penal Code Ann. § 9.31(a) (West 2011); *see also* Tex. Penal Code Ann. § 9.32(a) (West 2011) (providing that 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”).

A person is justified in using force or deadly force against another to protect a third person if “under the circumstances as the actor reasonably believes them to be, the actor would be justified under Section 9.31 or 9.32 in using force or deadly force to protect himself against the unlawful force or unlawful deadly force he

reasonably believes to be threatening the third person he seeks to protect[]” and “the actor reasonably believes that his intervention is immediately necessary to protect the third person.” *Id.* § 9.33 (West 2011). “In other words, a defendant is justified in defending a third person if, under the circumstances as the defendant reasonably believes them to be, the third person would be justified in defending himself.” *Henley*, 493 S.W.3d at 89. The term “immediately necessary” is not defined in sections 9.31, 9.32, or 9.33 of the Texas Penal Code; therefore, the term must be given its plain and ordinary meaning. *Id.*; *see also* Tex. Penal Code Ann. §§ 9.31, 9.32, 9.33.

Because the jury was instructed as to both self-defense and defense of a third person, yet found Jackson guilty, the jury implicitly rejected Jackson’s claims that he acted in self-defense or defense of a third person. *See Zuliani*, 97 S.W.3d at 594–95. The jury heard testimony that the victim, who did not have a weapon, swung his hands at Carry a few times through the car window, and Jackson then picked up a gun and fired it toward the open window. The jury also had before it Jackson’s written statement, in which Jackson recounted that the victim began striking Carry, and that after Jackson saw “something chrome” in the hand of another individual, who had come out of a different vehicle, he fired one round through the open driver’s window because he was afraid he and Carry were about to be shot. Jackson also

indicated in his statement that Chaison had previously fired a gun at him and Carry, and that Jackson and Carry had been robbed at gunpoint by unknown individuals. The jury also heard evidence that the bullet struck the victim and caused his death. The jury heard Carry testify that he believed Jackson was trying to protect him. The jury could have disbelieved Carry's testimony, as well as all or any part of Jackson's written statement. *See Chambers*, 805 S.W.2d at 461.

Viewing the evidence in the light most favorable to the verdict, we conclude that a rational jury could have found the essential elements of the offense beyond a reasonable doubt and could have found against Jackson as to his claims of self-defense and defense of a third person. *See Tex. Penal Code Ann.* §§ 9.31, 9.32, 9.33, 19.02(b)(2); *Jackson*, 443 U.S. at 319; *Hooper*, 214 S.W.3d at 13; *Jones*, 944 S.W.2d at 647. A rational jury could have concluded that Jackson did not reasonably believe that there was an immediate need to use deadly force against the victim and that Jackson was therefore not justified in using deadly force in self-defense or in defense of Carry. *See Tex. Penal Code Ann.* §§ 9.31, 9.32, 9.33; *Henley*, 493 S.W.3d at 89. Accordingly, we overrule issue one.

ISSUE TWO

In his second issue, Jackson contends that the trial court erred by denying his motion for new trial, in which he asserted that the trial court's instructions made

juror number two feel coerced to convict Jackson. Jackson suggests that the trial court's repeated instructions to the jury to refer to the court's charge and continue deliberating, combined with language in the jury charge which instructed the jury that its failure to follow the law could result in the declaration of a mistrial and that "your deliberate violation of this charge could subject you to being held in contempt of Court[,]” was coercive and gave the jury the impression that “following the law” meant reaching a unanimous verdict.

We review the trial court's denial of a motion for new trial under an abuse of discretion standard. *Salazar v. State*, 38 S.W.3d 141, 148 (Tex. Crim. App. 2001). We do not substitute our judgment for that of the trial court; rather, we determine whether the trial court's decision was arbitrary or unreasonable. *Lewis v. State*, 911 S.W.2d 1, 7 (Tex. Crim. App. 1995). We view the evidence in the light most favorable to the trial court's ruling, and we will uphold the ruling if it is within the zone of reasonable disagreement. *State v. Thomas*, 428 S.W.3d 99, 104 (Tex. Crim. App. 2014); *Riley v. State*, 378 S.W.3d 453, 457 (Tex. Crim. App. 2012).

In his motion for new trial, Jackson alleged that the responses the trial judge sent into the jury room pressured a juror to change her vote to “guilty.” Specifically, Jackson alleged that on the second day of deliberations, the jury foreman sent out a note stating that one juror does not “understand or agree with the law and wants to

know what options are available.” Jackson requested that the trial judge declare a mistrial, but the trial judge instead sent a note that referred jurors to the charge and ordered them to continue to deliberate. Jackson complained in the motion that although the jury charge language required a unanimous verdict, the trial judge “never informed the jurors that a mistrial due to a hung jury was a potential option.” According to Jackson’s motion, within minutes of receiving the note, the jury found Jackson guilty.

Attached to Jackson’s motion was the affidavit of juror number two, who averred that the initial tally of votes was eight “guilty” and four “not guilty,” and juror number two also averred that she was one of the four who initially voted “not guilty.” Juror number two stated that the jury continued to deliberate, and she stood alone by the end of the day. Juror number two explained that she felt that Jackson “acted out of fear” and that she had decided that night to vote “not guilty.” Juror number two stated that the next day, she informed her fellow jurors that she would not vote to convict, and the jurors discussed what would happen if they told the court they could not agree. Juror number two averred, “As I understood it[,] we would be a hung jury and the prosecution would retry him.” According to juror number two, the jury then sent a note to the trial judge, and the trial judge responded by instructing the jury to refer to the charge and continue to deliberate until reaching a verdict.

Juror number two averred that she was then constantly attacked by the other jurors, and the jury eventually sent another note to the trial judge, but the trial court's response was the same as before. Juror number two stated that "[t]he charge said we had to be unanimous and [the trial judge] continually told us to refer to the charge. It was then that I understood that my opinion did not matter." Juror number two stated in her affidavit that she "felt pressured to give in by the responses the Court sent into the jury room." The affidavit of juror number two was admitted into evidence at the hearing on Jackson's motion for new trial.

The record reflects that the jury's first communication regarding its difficulty with reaching an agreement was the jury's fourth question, which stated, "We have a juror who doesn't understand the definition of self-defense." The trial judge responded, "Please refer to the Court's Charge and continue your deliberations." In addition, the record indicates that the jury's fifth note stated, "We cannot agree on a verdict[.]"

The sixth note from the jury stated, "We have one juror who doesn't understand or agree with the law and wants to know what options are available." After the trial court received the sixth note, Jackson's counsel argued that the jury's note clearly indicated that the jury was deadlocked and that "the foreman and other jurors believe . . . that this juror is not following the law, and they're trying to put

pressure on that person In other words, they're trying to compel or to switch her vote[.]” Jackson’s counsel also asserted, “This is essentially a cry for help from this juror, and we would move for a mistrial.”

The record reflects that although the trial judge considered sending an *Allen*¹ charge to the jury, she ultimately decided to “send in just a standard ‘refer to the Court’s charge [response],’ and . . . see where we go from there.” The trial judge denied the motion for mistrial and again instructed the jury to refer to the court’s charge and to continue deliberating. The trial court later received another note from the jury, which stated, “We cannot agree on a verdict.” The record does not contain a response by the trial court to note seven.

The record reflects that trial began on August 8, 2016, the trial court gave the jury its charge at 1:25 p.m. on August 10, 2016, and the jury began deliberating at 2:17 p.m. on that date. The first in-chambers conference, at which the trial judge indicated that she had received a note stating that the jurors could not agree on a verdict and that she would give an *Allen* charge after lunch, ended at 11:46 a.m. on August 11. The second in-chambers conference, during which Jackson’s counsel argued that the jury was deadlocked and the members of the jury were attempting to compel one juror to change her vote, ended at 1:37 p.m. The record reflects that the

¹*See Allen v. United States*, 164 U.S. 492, 501 (1896).

jury reached its verdict finding Jackson guilty of murder at 1:54 p.m. on August 11, 2016, and decided Jackson's punishment on the same date.

“After the cause is submitted to the jury, it may be discharged when it cannot agree . . .; or the court may in its discretion discharge it where it has been kept together for such time as to render it altogether improbable that it can agree.” Tex. Code Crim. Proc. Ann. art. 36.31 (West 2006). However, there is no limit as to the length of time a jury may deliberate. *Melancon v. State*, 66 S.W.3d 375, 383 (Tex. App.—Houston [14th Dist.] 2001, pet. ref'd) (op. on reh'g). It is within the trial court's discretion to determine the length of time a jury may be held for deliberations. *Katzenberger v. State*, 439 S.W.3d 566, 570 (Tex. App.—Houston [14th Dist.] 2014, pet. ref'd). “The trial court's exercise of discretion must be assessed by considering the amount of time the jury deliberated in light of the nature of the case and the evidence.” *Id.* The fact that a jury must weigh difficult testimony and determine witnesses' credibility often means longer deliberation is necessary. *Id.* at 571.

As discussed above, it is within the trial court's discretion to determine the length of time to hold a jury for deliberations, and we must evaluate the trial court's exercise of its discretion by considering the amount of time the jury deliberated in light of the nature of the case and the evidence. *Id.* at 570. The State called eleven

witnesses and offered eleven exhibits, including Jackson's written statement, Jackson's video statement, and nine photographs. The defense offered one photograph. During his opening and closing arguments, defense counsel argued that Jackson acted in self-defense and in defense of Carry, and the jury was charged on those defenses.

Juror number two averred that she understood that, if the jurors could not agree, they would be a hung jury and the prosecution would retry Jackson. Juror number two did not claim that she feared being held in contempt of court for causing the jury to be unable to reach a unanimous decision. The trial court's instructions to the jury, which consisted solely of telling the jury to refer to the charge and continue deliberating, were neutral and non-threatening. The record reveals that the jury began its deliberations during the afternoon of August 10 and returned a verdict of guilty the afternoon of August 11. Given the seriousness of the charge against Jackson, the number of witnesses called and exhibits introduced, as well as Jackson's assertion of two defenses, we cannot conclude that the trial court abused its discretion by instructing the jury to refer to the charge and continue deliberating, nor can we conclude that the trial court's instructions were coercive. *See Thomas*, 428 S.W.3d at 104; *Riley*, 378 S.W.3d at 457; *Lewis*, 911 S.W.2d at 7; *Katzenberger*,

439 S.W.3d at 570. Accordingly, we overrule issue two and affirm the trial court's judgment.

AFFIRMED.

STEVE McKEITHEN
Chief Justice

Submitted on August 7, 2017
Opinion Delivered August 30, 2017
Do Not Publish

Before McKeithen, C.J., Horton and Johnson, JJ.