In The
Court of Appeals
Seventh District of Texas at Amarillo

No. 07-15-00151-CR

ADAM MIGUEL CASTANEDA, APPELLANT

V.

THE STATE OF TEXAS, APPELLEE

On Appeal from the 207th District Court
Comal County, Texas[1]
Trial Court No. CR2011-399, Honorable Dib Waldrip, Presiding

February 19, 2016

MEMORANDUM OPINION

Before QUINN, C.J., and CAMPBELL and HANCOCK, JJ.

Appellant, Adam Miguel Castaneda a/k/a Adan Miguel Castaneda, was charged by indictment with two counts of attempted murder,[2] two counts of aggravated assault,[3] one count of deadly conduct,[4] one count of tampering with physical evidence,[5] and one

[1] Pursuant to the Texas Supreme Court's docket equalization efforts, this case was transferred to this Court from the Third Court of Appeals. *See* TEX. GOV'T CODE ANN. § 73.001 (West 2013).

[2] *See* TEX. PENAL CODE ANN. § 19.02 (West 2011).

[3] *See id.* § 22.02 (West 2011).

[4] *See id.* § 22.05 (West 2011).

count of criminal mischief in an amount of more than $1,500 but less than $20,000.[6] After a bench trial, appellant was found guilty of one count of aggravated assault, one count of deadly conduct, and the single count of criminal mischief. The trial court acquitted appellant of the other indicted offenses. Subsequently, the trial court found appellant not guilty by reason of insanity at the time of commission of the three referenced offenses. Additionally, the trial court found appellant was a violent offender and committed him for an evaluation to determine if inpatient treatment was warranted.

Pursuant to article 46C.270 of the Texas Code of Criminal Procedure,[7] appellant now brings forth a single issue on appeal. Appellant contends that the evidence is insufficient to support the trial court's finding that appellant intended to cause bodily injury to Roy Esparza.[8] We will affirm.

Factual and Procedural Background

On May 27, 2011, at approximately 4:00 a.m., appellant took a taxicab from San Antonio to the home of his mother and step-father in Comal County. After arriving at the home, appellant proceeded to fire at least twenty-three rounds from a Glock .45 caliber

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[5] *See id.* § 37.09(a)(1) (West Supp. 2015).

[6] *See id.* § 28.03 (West Supp. 2015).

[7] Article 46C.270 provides in relevant part, that an acquitted person may appeal a judgment reflecting an acquittal by reason of insanity on the basis of the following:

> (2) a finding that the offense on which the prosecution was based involved conduct that:
> (B) placed another person in imminent danger of serious bodily injury; or
> (C) consisted of a threat of serious bodily injury to another person through the use of a deadly weapon.

TEX. CODE CRIM. PROC. ANN. art. 46C.270(a)(2) (West 2006).

[8] Appellant does not contest the trial court's finding of guilt on the deadly conduct and the criminal mischief counts of the indictment.

semi-automatic handgun at the structure. The record reflects that appellant stopped to reload the Glock on at least one occasion. Eighteen of the fired rounds actually struck the home. Of those rounds that struck the house, five rounds were ultimately located inside the living area of the home.

Prior to the incident, appellant had sent a text message to his mother stating that he intended to take a taxi to her house and kill her and her husband. On the night of the shooting, appellant was apprehended and admitted shooting the house. Appellant contended that he fired at the house as a warning only and that he did not intend to hurt anyone. From the record we also learn that the mother had testified that she was scared by this incident and that, on the night of the shooting, she texted a friend that she was "lucky to be alive." One of the rounds fired at the house ended up in the kitchen area. At the time the firing began, appellant's step-father, Roy Esparza, was actually up and in the kitchen area.

After being convicted in a bench trial of the offense of aggravated assault, appellant was acquitted by reason of insanity. In this appeal, appellant attacks the sufficiency of the evidence on the issue of intent. We will affirm.

Standard of Review and Applicable Law

In assessing the sufficiency of the evidence, we review 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 offense beyond a reasonable doubt. *Jackson v. Virginia*, 443 U.S. 307, 319, 99 S.Ct. 2781, 61 L.Ed.2d 560 (1979); *Brooks v. State*, 323 S.W.3d 893, 912 (Tex. Crim. App. 2010). "[O]nly that evidence which is sufficient in

character, weight, and amount to justify a fact finder in concluding that every element of the offense has been proven beyond a reasonable doubt is adequate to support a conviction." *Brooks*, 323 S.W.3d at 917 (Cochran, J., concurring). We remain mindful that "[t]here is no higher burden of proof in any trial, criminal or civil, and there is no higher standard of appellate review than the standard mandated by *Jackson*." *Id.* (Cochran, J., concurring). When reviewing all of the evidence under the *Jackson* standard of review, the ultimate question is whether the jury's finding of guilt was a rational finding. *See id*. at 906, 907 n.26 (discussing Judge Cochran's dissenting opinion in *Watson v. State*, 204 S.W.3d 404, 448–50 (Tex. Crim. App. 2006), as outlining the proper application of a single evidentiary standard of review). "[T]he reviewing court is required to 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." *Id.* at 899.

The sufficiency standard set forth in *Jackson* is measured against a hypothetically correct jury charge. *See Malik v. State*, 953 S.W.2d 234, 240 (Tex. Crim. App. 1997). Such a charge is one that accurately sets forth the law, is authorized by the indictment, does not unnecessarily increase the State's burden of proof or unnecessarily restrict the State's theories of liability, and adequately describes the particular offense for which the defendant was tried. *Id.* The "'law' as 'authorized by the indictment' must be the statutory elements of the offense" charged "as modified by the charging instrument." *Curry v. State*, 30 S.W.3d 394, 404 (Tex. Crim. App. 2000).

In order to convict a person of aggravated assault, as alleged in the indictment, the State was required to prove the following elements:

1. Appellant

2. on or about May 27, 2011,

3. intentionally or knowingly

4. threatened Rojelio Esparza

5. with imminent bodily injury by

6. firing a handgun at or in the direction of Rojelio Esparza

7. and, during the commission of said assault, appellant, did use or exhibit a deadly weapon, to-wit: .45 caliber Glock semi-automatic handgun.

The Texas Penal Code defines intentional conduct as follows:

> A person acts intentionally, or with intent, with respect to the nature of his conduct or to a result of his conduct when it is his conscious objective or desire to engage in the conduct or cause the result.

See TEX. PENAL CODE ANN. § 6.03(a) (West 2011).

Further, "knowingly" is defined as follows:

> A person acts knowingly, or with knowledge, with respect to the nature of his conduct or to circumstances surrounding his conduct when he is aware of the nature of his conduct or that the circumstances exist. A person acts knowingly, or with knowledge, with respect to a result of his conduct when he is aware that his conduct is reasonably certain to cause the result.

See id. § 6.03(b).

Intent is a fact issue for the factfinder to resolve. *Robles v. State,* 664 S.W.2d 91, 94 (Tex. Crim. App. 1984) (en banc). Proof of a culpable mental state generally relies upon circumstantial evidence. *Haye v. State,* 634 S.W.2d 313, 315 (Tex Crim. App. [Panel Op.] 1982). Intent can be inferred from the acts, words, and conduct of the accused. *Dues v. State,* 634 S.W.2d 304, 305 (Tex. Crim. App. [Panel Op.] 1982). A

threat may be shown by the action and conduct of the accused as well as by his words. *See McGowan v. State,* 664 S.W.2d 355, 357 (Tex. Crim. App. 1984) (en banc).

Analysis

It is appellant's contention that the State's evidence fails on the element of intent. A review of the record before the Court reveals the following: (1) On the night in question, May 27, 2011, appellant advised his mother that he was going to take a taxi and come to her home and kill her and her husband; (2) appellant did in fact take a taxi to his mother's home; (3) appellant brought a Glock .45 caliber semi-automatic handgun with him; (4) appellant fired twenty-three shots at the home; (5) eighteen of the shots fired at the home actually struck the home; (6) because appellant had texted his intent to his mother earlier in the evening, the trier of fact could infer that appellant knew his mother and her husband were in the house when he opened fire; (7) one of the rounds went into the kitchen area of the home; (8) appellant's step-father was in the kitchen when the firing began; (9) appellant stopped during the firing and reloaded the semi-automatic pistol he was firing; and (10) on the night of the shooting, appellant's mother texted a friend that she was lucky to be alive. From these facts, a rational trier of fact could find that every element of the offense had been proven beyond a reasonable doubt. *See Brooks*, 323 S.W.3d at 906, 907 n.26.

Appellant contends that because he told the investigating officers that it was not his intent to hurt anyone and because he did not, in fact, hurt anyone, there is a failure of proof on the issue of intent. Such a position ignores the fact that the trier of fact was entitled to believe or disbelieve appellant's testimony. *Lafoon v. State,* 543 S.W.2d 617,

620 (Tex. Crim. App. 1976). Finally, even if appellant did not intend to physically harm another person, he is still responsible if his acts caused another to feel threatened with imminent bodily injury. *See Jefferson v. State,* 346 S.W.3d 254, 256–57 (Tex. App.—Houston [14th Dist.] 2011, pet. ref'd). Because we have found that the evidence is sufficient to sustain the trial court's finding of guilt, we overrule appellant's single issue.

Conclusion

Having overruled appellant's only issue, the trial court's finding of guilt to the offense of aggravated assault is affirmed.

Mackey K. Hancock
Justice

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