In The
Court of Appeals
Sixth Appellate District of Texas at Texarkana

No. 06-17-00196-CR

CHRISTROYVIUS DEJUAN MASON, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the 6th District Court
Lamar County, Texas
Trial Court No. 26483

Before Morriss, C.J., Moseley and Burgess, JJ.
Memorandum Opinion by Justice Moseley

MEMORANDUM OPINION

A trial to the bench resulted in Christroyvius DeJuan Mason's conviction for the murder of Quenton Grundy and a sentence of thirty-five years' imprisonment. On appeal, Mason argues that insufficient evidence supported the trial court's rejection of his assertions of self-defense and sudden passion. Finding otherwise, we affirm the trial court's judgment.

I. Sufficient Evidence Supported the Trial Court's Rejection of Mason's Self-Defense Claim

A. The Evidence at Trial

On the day of the incident, Mason and his brother, Parris Hughes, were assisting their close friends, Grundy and Grundy's brother, Dewey Hale, in moving out of their then-current residence in Paris, Texas. A squabble between Grundy and Mason arose because Grundy accused Mason of having stolen a gold medallion necklace from him. The squabble escalated quite quickly and Mason shot Grundy while Grundy was charging towards him.

At trial, Hale recounted the events leading up to the shooting. Hale testified that he had a violent relationship with his brother and that they were forced to move out of their home, where they lived with their sick mother, because Grundy would not pay his part of the rent. By the time Mason and Hughes arrived to assist in the move, Hale said he was arguing with Grundy over a missing shotgun. Mason told Hale to ask Grundy where the shotgun was, implying that Grundy had taken it. Hale testified that he confronted Grundy about the shotgun to get it back and "was getting to the point that [he] was mad." Leaving Grundy behind, Hale, Mason, and Hughes left for lunch.

Hale testified that Grundy began texting Mason about his missing gold medallion necklace. Mason and Hale returned to the house to make an effort at locating the necklace, but Grundy began an argument with Mason. According to Hale, Grundy began screaming and wanted to fight Mason, but Mason told Grundy to "chill." Hale testified, "[A]t first when [Mason] told him to stop playing . . . I knew that it wasn't his intentions that he was going to shoot him." However, Grundy did not heed the advice. Hale testified that Grundy took off his shirt, "wanted to fight," and "was charging" at Mason when Mason shot him in the front yard. Hale said that although Grundy was moving toward Mason, there was "still a distance" between the two when he was shot.

The single bullet from Mason's weapon hit Grundy in the chin and pierced his chest cavity. Hale immediately grabbed Grundy and sped him to the hospital, where he eventually expired. Hale clarified that Grundy never had a weapon in his hands on the day he was shot. According to Hale, Mason never said that he was afraid of Grundy, that he was scared for his life, or that the shooting was an accident.

Mason's father, Derek Hughes, testified that Mason woke him up after the shooting, laid his head on his chest, and cried. According to Mason's friend, Lakisha Alexander, Mason said he shot Grundy because Grundy was "rowdy . . . ready to fight" and claimed "he would shoot [Mason's] face off . . . if he had his pistol." Alexander told investigators that Grundy said, "[I]f you're going to kill me, kill me," before he was shot. She also testified that Mason was upset and could not believe that he had shot Grundy. Yet, Alexander said Mason knew that Grundy did not have a weapon and, without remorse, declared that he should have shot Grundy in the face.

Cordeius Easter testified that he assisted Mason in cleaning the murder weapon before Mason fled to Dallas, where he was later apprehended.

Mason asserted a self-defense claim at trial. However, Doug Murphy, a peace officer with the City of Paris Police Department, testified that Mason never mentioned self-defense during his recorded interview. During the interview, Mason initially stated that someone had taken a hit out on Grundy, denied being at the scene when Grundy was shot, and said he was walking to his girlfriend's house when he heard the gunshot in the distance. The interview demonstrated that although Murphy gave Mason multiple opportunities to assert self-defense or claim that the shooting was an accident, Mason maintained that he was not at the scene. Mason's position that he was not at Grundy's home during the shooting never wavered, even after officers said that they did not believe that Mason intentionally shot Grundy, but that he did a bad thing after a heated argument.

Following the interview, Mason had a recorded conversation with his father indicating that he spoke to detectives against his father's advice because the officers related that everyone they spoke with had already pointed to Mason as Grundy's shooter. Derek lamented Mason's decision and said,

> Listen to me, [Mason]. It's not about you doing it. It's not about that. It's about we [sic] making it look like *why* you did it . . . . I told you [Hale] was going to tell them. [Hale] told it from the get-go. That's how they knew everything. But, that's not important. . . . But at the same time, we got to play this as you protected your life.

Derek then talked about someone he knew who was serving forty years in prison and added, "[A]nd he didn't even do his crime." Wrapping up his advice, Derek told Mason, "You got to play *why*

did you do it. Because you were scared for your life. He'd been telling you all day he was going to kill you."

After hearing all of the evidence against Mason, the trial court rejected Mason's assertion of self-defense and found Mason guilty of murder.

B. Standard of Review

A defendant who raises the issue of self-defense has the initial burden to produce some evidence supporting that claim. *Zuliani v. State*, 97 S.W.3d 589, 594 (Tex. Crim. App. 2003). Once evidence is produced, the burden of persuasion shifts to the State to disprove the defense. *Id.* at 594. The State is not required to produce evidence rebutting the defense, but rather must prove its case beyond a reasonable doubt. *Id*. A fact-finder's verdict of guilt is an implicit finding rejecting the defense. *Id.*

Since the State had the burden of persuasion to disprove the justification beyond a reasonable doubt, we evaluate the legal sufficiency of the evidence by reviewing all the evidence in the light most favorable to the trial court's judgment to determine whether any rational jury could have found against the defendant, beyond a reasonable doubt, on the issue of self-defense. *Hernandez v. State*, 309 S.W.3d 661, 665 (Tex. App.—Houston [14th Dist.] 2010, pet. ref'd); *see Brooks v. State*, 323 S.W.3d 893, 912 (Tex. Crim. App. 2010) (citing *Jackson v. Virginia*, 443 U.S. 307, 319 (1979)).

C. Application

Here, ample evidence pointed to Mason as the person who shot and killed Grundy. The question at trial was whether Mason intentionally shot Grundy, or whether he acted in 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." TEX. PENAL CODE ANN. § 9.31(a) (West 2011). However, because Mason used deadly force, he would only be "justified in using deadly force . . . to protect [himself] against the other's use or attempted use of unlawful deadly force." TEX. PENAL CODE ANN. § 9.32(a)(2)(A) (West 2011).

The evidence at trial supported the trial court's rejection of Mason's self-defense theory because he was not entitled to assert it. Hale testified that Grundy did not have a weapon when he was shot and that there was some distance between the two when Mason pulled the trigger. Alexander testified that Grundy threatened to "shoot [Mason's] face off . . . *if* he had his pistol."[1] (Emphasis added). The evidence showed that Grundy did not have his pistol, and Alexander testified that Mason knew Grundy did not have a weapon.

Mason brought a gun to a potential fist fight. There was no evidence that Grundy used or attempted to use deadly force, and it was uncontested that Grundy had no weapon at the time he was shot. Thus, because nothing supported the contention that Mason reasonably believed he had to immediately use deadly force to protect himself from Grundy's use or attempted use of unlawful deadly force, Mason was not entitled to assert self-defense. *See Graves*, 452 S.W.3d at 911 (holding that defendant not entitled to assert self-defense when having used deadly force against someone who threatened to "come back and shoot the whole house up" following an argument

[1]"Verbal provocation alone does not justify the use of deadly force against another." *Graves v. State*, 452 S.W.3d 907, 911 (Tex. App.—Texarkana 2014, pet. ref'd).

since the person was neither then using nor attempting to use deadly force) (citing *Dearborn v. State*, 420 S.W.3d 366, 378 (Tex. App.—Houston [14th Dist.] 2014, no pet.) (holding defendant not entitled to self-defense instruction where evidence showed victim armed with nothing other than fists and noting blows with fists not typically considered deadly force); *Trammell v. State*, 287 S.W.3d 336, 341 (Tex. App.—Fort Worth 2009, no pet.) (appellant not entitled to self-defense instruction in absence of immediacy of threat of deadly force from victim)). Accordingly, we overrule Mason's first point of error.

II. Sufficient Evidence Supported the Rejection of Mason's Sudden-Passion Defense

In his last point of error, Mason argues that the evidence was legally and factually insufficient to support a negative finding on the issue of sudden passion. Murder is a first degree felony. TEX. PENAL CODE ANN. § 19.02(c) (West 2011). At the punishment phase of trial, a defendant may seek to reduce punishment to that of a second degree felony by proving that he caused the death under the immediate influence of sudden passion with adequate cause. TEX. PENAL CODE ANN. § 19.02(d) (West 2011). "Sudden passion" is passion directly caused by and from provocation by the individual killed or a third party acting with the person killed which arises at the time of offense and is not solely the result of former provocation. TEX. PENAL CODE ANN. § 19.02(a)(2) (West 2011). "Adequate cause" is any cause that would typically lead to anger, rage, resentment, or terror in a person of ordinary temperament, sufficient to render the mind incapable of cool reflection. TEX. PENAL CODE ANN. § 19.02(a)(1) (West 2011). If the defendant affirmatively proves sudden passion by a preponderance of the evidence, the offense is a second degree felony. TEX. PENAL CODE ANN. § 19.02(d).

A. Standard of Review

The Texas Court of Criminal Appeals has held that the *Jackson v. Virginia*, 443 U.S. 307 (1979), standard is the only standard a reviewing court should apply to determine the sufficiency of evidence in support of the elements of a criminal offense that the State must prove beyond a reasonable doubt. *Brooks*, 323 S.W.3d at 895. However, the *Jackson* standard "does not apply to elements of an affirmative defense that the defendant must prove by a preponderance of the evidence." *Matlock v. State*, 392 S.W.3d 662, 667 (Tex. Crim. App. 2013). Because the issue of sudden passion must be proven by a preponderance of the evidence if it is to be sucessful, the *Jackson* standard does not apply to review the sufficiency of the evidence supporting the fact-finder's rejection of sudden passion during punishment. *Gaona v. State*, 498 S.W.3d 706, 710 (Tex. App.—Dallas 2016, pet. ref'd) (citing *Butcher v. State*, 454 S.W.3d 13, 20 (Tex. Crim. App. 2015); *Smith v. State*, 355 S.W.3d 138, 147–48 (Tex. App.—Houston [1st Dist.] 2011, pet. ref'd)); *see* TEX. PENAL CODE ANN. § 19.02(d). Therefore, we conduct both a legal and factual sufficiency review in addressing this issue.[2] *Bradshaw v. State*, 244 S.W.3d 490, 502 (Tex. App.—Texarkana 2007, no pet.); *see Matlock*, 392 S.W.3d at 667; *De Leon v. State*, 373 S.W.3d 644, 650 (Tex. App.—San Antonio 2012, pet. ref'd) (citing *Meraz v. State*, 785 S.W.2d 146, 154–55 (Tex. Crim. App. 1990)).

"A legal sufficiency challenge to the evidence supporting a negative finding on sudden passion involves two steps." *Bradshaw*, 244 S.W.3d at 502. First, we examine the record for evidence that supports the negative finding of the fact-finder where the issue of sudden passion is

[2]We note that self-defense is "classified as a defense, as opposed to an affirmative defense," with burdens at trial that alternate between the defendant and the State. *Zuliani*, 97 S.W.3d at 594.

raised, "while ignoring all evidence to the contrary." *Id*. (quoting *Howard v. State*, 145 S.W.3d 327, 334 (Tex. App.—Fort Worth 2004, no pet.)). Second, if no evidence is found to support a rejection of sudden passion, then we examine the entire record to determine if it establishes the contrary proposition of sudden passion as a matter of law. *Id*. (citing *Cleveland v. State*, 177 S.W.3d 374, 387 (Tex. App.—Houston [1st Dist.] 2005, pet. ref'd)); *see Perez v. State*, 323 S.W.3d 298, 304 (Tex. App.—Amarillo 2010, pet. ref'd).

In examining legal sufficiency, we defer to the fact-finder's role "to fairly resolve conflicts in testimony, to weigh the evidence, and to draw reasonable inferences from basic facts to ultimate facts." *Hooper v. State*, 214 S.W.3d 9, 13 (Tex. Crim. App. 2007) (citing *Jackson*, 443 U.S. at 318–19); *Clayton v. State*, 235 S.W.3d 772, 778 (Tex. Crim. App. 2007); *see Cleveland v. State*, 177 S.W.3d 374, 388–89 (Tex. App.—Houston [1st Dist.] 2005, pet. ref'd). The fact-finder is the sole judge of the credibility of the witnesses and the weight to be given their testimony and may "believe all of a witnesses' testimony, portions of it, or none of it." *Thomas v. State*, 444 S.W.3d 4, 11 (Tex. Crim. App. 2014); *see Lancon v. State*, 253 S.W.3d 699, 705 (Tex. Crim. App. 2008) (noting that we give "almost complete deference to a [fact-finder's] decision when that decision is based on an evaluation of credibility").

In addressing a factual sufficiency challenge to the jury's negative finding of sudden passion, we employ the *Meraz* standard. *Lantrip v. State*, 336 S.W.3d 343, 346 (Tex. App.—Texarkana 2011, no pet.) (citing *Brooks*, 323 S.W.3d at 924 n.67)); *Cleveland*, 177 S.W.3d at 390–91. We ask whether, after considering all of the evidence, the judgment is so against the great weight and preponderance of the evidence that it is clearly wrong or manifestly unjust. *Smith v.*

State, 355 S.W.3d 138, 148 (Tex. App.—Houston [1st Dist.] 2011, pet. ref'd) (citing *Meraz*, 785 S.W.2d at 154–55)); *see Bradshaw*, 244 S.W.3d at 502. During this analysis, we review all of the evidence in a neutral light and do not intrude on the fact-finder's role as the judge of the weight and credibility of the physical evidence and testimony. *Smith*, 355 S.W.3d at 148 (citing *Cleveland*, 177 S.W.3d at 390–91); *Bradshaw*, 244 S.W.3d at 502.

B. Additional Evidence During Punishment

During punishment, Murphy testified that Grundy was angry with Mason for telling Hale that he took the shotgun. He believed that the shooting was caused in the heat of the moment by "an argument that escalated."

Mason testified in his own defense to explain how he came to shoot someone he believed was his "homeboy." Grundy and Hale were arguing over Hale's missing shotgun. Mason testified that he had seen Grundy with the shotgun on the day before the incident and that Grundy was frustrated with him for telling Hale that Grundy might know where it was. In describing the argument which occurred in the front yard, Mason testified that Grundy mimicked a gun with his finger, saying, "[Y]ou're going to get your issue." According to Mason, Grundy walked into the house, came back out, and said he would kill Mason if he "snitch[ed] on anything else." Mason replied, "[Y]ou ain't going to kill nothing," which prompted Grundy to come toward him. Mason testified that at that point, he pulled out the gun and told Grundy "to chill out." Mason fired the gun because Grundy "kept coming." When the weapon was discharged, Grundy was coming off the front porch while Mason was standing beside Hale's car, which was pulled up in the driveway and parked in the back of the house.

Mason testified that he believed Grundy intended to kill him. When asked if Grundy had a gun that day, Mason replied, "No sir, not to my knowledge. Not -- not at that time. I don't know if he had a gun or not." When asked what he was thinking when he pulled the trigger, Mason said, "I was sort of angry but I was scared too. I just wanted him to stay back." In making its decision to reject Mason's sudden-passion argument, the trial court reasoned, "[W]hen you pulled the gun and you said chill, in the Court's opinion you were fighting him at that point, you just had a bigger weapon."

C. Analysis

"Sudden passion is an extreme emotional and psychological state." *Dukes v. State*, 486 S.W.3d 170, 180 (Tex. App.—Houston [1st Dist.] 2016, no pet.). The trial court heard that Mason and Grundy were engaged in a heated argument, but Mason did not testify that he acted out of terror,[3] rage, or resentment. Instead, he said he was only "sort of angry." However, both Hale and Grundy testified that Mason had instructed Grundy to calm down and "stop playing." From this evidence, the trial court could have concluded that Mason was capable of cool reflection and did not act out of sudden passion. The trial court could have also decided that Grundy's conduct during the argument over a missing gold medallion necklace would not commonly produce in a person of ordinary temper sudden passion sufficient to render the mind incapable of cool reflection. Thus, we conclude that this evidentiary record, "while ignoring all evidence to the contrary," supported the trial court's negative finding on sudden passion. *See Bradshaw*, 244 S.W.3d at 502.

[3]Hale testified that Mason never claimed he was afraid of Grundy.

Further, the evidence was factually sufficient to support the trial court's negative finding on sudden passion. Mason testified that he was scared of Grundy. Hale's and Alexander's testimony suggested otherwise. Their belief that Mason was not afraid of Grundy was supported by Mason's own account since Mason replied, "[Y]ou ain't going to kill nothing" to Grundy's threats. Mason testified that he fired the shot merely because Grundy "kept coming." In any case, "[n]either ordinary anger nor fear alone raises an issue of sudden passion arising from adequate cause." *Moncivais v. State*, 425 S.W.3d 403, 407 (Tex. App.—Houston [1st Dist.] 2011, pet. ref'd) (citing *Hernandez v. State*, 127 S.W.3d 206, 211, 214 (Tex. App.—Houston [1st Dist.] 2003, pet. ref'd)). Rather, there must be some evidence that Mason was under the immediate influence of sudden passion. *See Trevino v. State*, 100 S.W.3d 232, 241 (Tex. Crim. App. 2003) (per curiam).

Mason fired a single bullet after Grundy failed to yield to his command to calm down. After the incident, Mason failed to indicate that he acted in sudden passion either during his recorded interview or the recorded telephone conversation in which Derek suggested that Mason tell others he shot Grundy because he was scared for his life. Mason told Alexander that he pulled the trigger because Grundy was ready to fight, not as a result of sudden passion. Instead of averring that he was captured in an extreme emotional and psychological state of sudden passion, Mason testified that he was simply "sort of angry" at Grundy when he shot him. Even when reviewing this evidence in a neutral light, we conclude that the trial court, as the fact-finder and assessor of Mason's credibility, could have rationally determined that Mason failed to prove by a preponderance of the evidence that he acted out of sudden passion.

Therefore, after considering all of the relevant evidence, we conclude that the verdict is not so against the great weight and preponderance of the evidence as to be manifestly unjust, but rather reflects an appropriate exercise of the trial court's fact-finding role. *See Meraz*, 785 S.W.2d at 154–55. Accordingly, we overrule Mason's last point of error.

IV. Conclusion

We affirm the trial court's judgment.

Bailey C. Moseley
Justice

Date Submitted: April 26, 2018
Date Decided: May 2, 2018

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