NUMBERS 13-14-00537-CR

COURT OF APPEALS

THIRTEENTH DISTRICT OF TEXAS

CORPUS CHRISTI - EDINBURG

ALLEN RAY INCE, **Appellant,**

v.

THE STATE OF TEXAS, **Appellee.**

On appeal from the 36th District Court of Aransas County, Texas.

MEMORANDUM OPINION

Before Justices Rodriguez, Benavides, and Perkes
Memorandum Opinion by Justice Perkes

Appellant Allen Ray Ince challenges his conviction of aggravated assault with a deadly weapon, a first-degree felony. *See* TEX. PENAL CODE ANN. § 22.02 (West, Westlaw through 2015 R.S.). After the jury found appellant guilty, the trial court assessed punishment at fifteen years' incarceration with the Texas Department of Criminal Justice—Institutional Division. Appellant challenges the legal and factual

sufficiency of the evidence to support the jury's implicit finding that his conduct was not justified by self-defense. We affirm.

I. BACKGROUND

According to the State's evidence adduced at trial, appellant was sitting in the Bay Wash laundromat when complainant Artavias Edwards arrived with his girlfriend's minor son and two minor daughters, the children's cousin, and a friend of one of the daughters. Appellant stared at the daughter, V.G.,[1] who testified that she felt "uneasy." Shortly thereafter, appellant spoke to V.G. and repeatedly asked her whether she had an "ID" or a driver's license so she could take him to buy beer. V.G. informed Edwards that appellant was speaking to her. Edwards told her not to worry but that if appellant spoke to her again to "let him know." Appellant then spoke to V.G. again, asking her the same questions as before. V.G. notified Edwards, who calmly asked appellant to stop talking to V.G. and her sister. Appellant continued talking to V.G., angering Edwards, who asked appellant to "step outside." Before following Edwards outside, appellant retrieved a knife from his bag. Once outside, the two men started fighting. Edwards claimed that appellant struck first by swinging his fist and rushing at him. During the fight, appellant pulled a knife and slashed at Edwards, who was unarmed. Edwards denied threatening appellant with deadly force. Edwards retreated from appellant, but appellant chased him, cutting and stabbing him, causing a stab wound to Edwards's chest and cuts to his arm, shoulder, and bicep.

[1] The minor witness was identified during the trial; we will use her initials to protect her identity.

During trial, appellant testified that he remembered Edwards coming into the laundromat. Appellant claimed he jokingly asked one of the girls if she had a driver's license, and she said no. Edwards approached and told him not to talk to the girls. Despite appellant agreeing not to speak with the girls, Edwards asked appellant to "take it outside." Edwards charged him as soon as he left the laundry mat. Edwards's charge prompted him to pull his knife out and to move back brandishing the knife. According to appellant, Edwards ran into the knife and impaled himself. Appellant denied chasing Edwards, arguing that he was fearful for his life and merely trying to defend himself. On cross-examination, appellant admitted to following Edwards, but claimed he only did so because Edwards continued charging him. Appellant explained that, during the fight, Edwards threatened to retrieve a gun from his car and kill him.

After the close of evidence, the trial court granted appellant's request for a self-defense instruction. The jury found appellant guilty as charged and this appeal ensued.

II. SUFFICIENCY OF THE EVIDENCE

By two issues, which we construe as one, appellant argues "the evidence at trial was legally and factually insufficient to support the jury's determination of guilt based upon [his] reasonable belief that the victim . . . was armed and had threatened to kill appellant." We read appellant's issue as challenging the legal sufficiency of the evidence to support his conviction and the factual sufficiency of the evidence to support the jury's implicit rejection of his theory of self-defense.

A. Standard of Review

1. Legal Sufficiency

"The standard for determining whether the evidence is legally sufficient to support a conviction is 'whether, after viewing the evidence in the light most favorable to the prosecution, *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.'" *Johnson v. State*, 364 S.W.3d 292, 293–94 (Tex. Crim. App. 2012) (quoting *Jackson v. Virginia*, 443 U.S. 307, 319 (1979)) (emphasis in original); *see Brooks v. State*, 323 S.W.3d 893, 898–99 (Tex. Crim. App. 2010) (plurality op.). The fact-finder is the exclusive judge of the credibility of witnesses and of the weight to be given to their testimony. *Brooks*, 323 S.W.3d at 899; *Lancon v. State*, 253 S.W.3d 699, 707 (Tex. Crim. App. 2008). Reconciliation of conflicts in the evidence is within the fact-finder's exclusive province. *Wyatt v. State*, 23 S.W.3d 18, 30 (Tex. Crim. App. 2000). We resolve any inconsistencies in the testimony in favor of the verdict. *Bynum v. State*, 767 S.W.2d 769, 776 (Tex. Crim. App. 1989) (en banc).

We measure the sufficiency of the evidence by the elements of the offense as defined by a hypothetically correct jury charge. *Villarreal v. State*, 286 S.W.3d 321, 327 (Tex. Crim. App. 2009) (citing *Malik v. State*, 953 S.W.2d 234, 240 (Tex. Crim. App. 1997) (en banc)). Such a charge is one that accurately sets out 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 offense of aggravated assault with a deadly weapon, as alleged in the indictment, requires the State to prove that appellant intentionally, knowingly, or recklessly caused serious bodily injury to Artavias Edwards and used or exhibited a deadly weapon—a knife—during the commission of the assault.

See TEX. PENAL CODE ANN. § 22.02.

2. Factual Sufficiency

The issue of self-defense is one of fact to be determined by the jury. *See Saxton v. State*, 804 S.W.2d 910, 913 (Tex. Crim. App. 1991). Appellant had the burden to prove by a preponderance of the evidence that he acted in self-defense. *See* TEX. PEN. CODE ANN. § 2.04(d) (West, Westlaw through 2015 R.S.). Once a defendant raises the issue of self-defense, the State then carries the burden to persuade the jury, beyond a reasonable doubt, that the claim of self-defense is not true. *See Saxton*, 804 S.W.2d at 912. The State need not specifically disprove the issue of self-defense. *Id.* at 913. Rather, the burden is incorporated into the State's burden to prove its case. *Id.* A jury verdict of guilty is an implicit finding rejecting the defendant's self-defense theory. *Id.* at 914.

When a defendant challenges the factual sufficiency of the rejection of a defense, the reviewing court reviews all of the evidence in a neutral light. *Yarborough v. State*, 178 S.W.3d 895, 904 (Tex. App.—Texarkana 2005, pet ref'd). We will set aside the verdict only if the evidence is so weak that the verdict is clearly wrong and manifestly unjust or the contrary evidence is so strong that the standard of proof beyond a reasonable doubt could not have been met. *Matlock v. State,* 392 S.W.3d 662, 670–71 (Tex. Crim. App. 2013); *see Zuniga v. State*, 144 S.W.3d 477, 484 (Tex. Crim. App. 2004); *see also Zuliani v. State*, 97 S.W.3d 589, 595 (Tex. Crim. App. 2003) (specifically outlining factual sufficiency standard concerning jury's rejection of self-defense); *Smith v. State*, 355 S.W.3d 138, 145 (Tex. App.—Houston [1st Dist.] 2011, pet ref'd).

B. Applicable Law

A person is justified in using force against another when and to the degree he or she reasonably believes the force is immediately necessary to protect himself or herself against the other's use or attempted use of unlawful force. TEX. PENAL CODE ANN. § 9.31(a) (West, Westlaw through 2015 R.S.); *see Frank v. State*, 688 S.W.2d 863, 868 (Tex. Crim. App. 1985). One has the right to defend against a reasonable appearance and apprehension of apparent danger to the same extent as against actual danger. *Dyson v. State*, 672 S.W.2d 460, 463 (Tex. Crim. App. 1984).

Additional requirements apply to the use of deadly force. *See* TEX. PENAL CODE ANN. § 9.31(d) (West, Westlaw through 2015 R.S.).

> (a) A person is justified in using deadly force against another:
>
> (1) if the actor would be justified in using force against the other under Section 9.31; and
>
> (2) when and to the degree the actor reasonably believes the deadly force is immediately necessary:
>
> (A) to protect the actor against the other's use or attempted use of unlawful deadly force;
>
> . . . .
>
> (c) A person who has a right to be present at the location where the deadly force is used, who has not provoked the person against whom the deadly force is used, and who is not engaged in criminal activity at the time the deadly force is used is not required to retreat before using deadly force as described by this section.
>
> . . . .

Id. § 9.32(a).

C. Analysis

Appellant's argument presumes that his version of events is correct. Of course, the jury was free to accept or reject any or all of appellant's evidence. *See Saxton*, 804 S.W.2d at 913. It is undisputed that appellant was the only armed combatant and further undisputed that appellant stabbed Edwards. Police officers examined the knife and concluded that it was capable of causing serious bodily injury or death. Aside from appellant's self-serving testimony, he presented no evidence that Edwards threatened him with any amount of force. According to the State's witnesses, appellant not only struck the first blow in the physical altercation, he retrieved the knife from his satchel prior to exiting the laundry mat. After reviewing the evidence in a light most favorable to the verdict, we conclude that the evidence was legally sufficient to support the jury's conclusion that appellant committed aggravated assault against Edwards and legally sufficient to support the jury's implicit rejection of appellant's theory of self-defense. *See Yarborough*, 178 S.W.3d at 904.

In reviewing the factual sufficiency of the evidence, we note that appellant offered no evidence that Edwards was armed during the fight. Instead, appellant claimed Edwards received the stab wound on his chest by impaling himself after charging appellant during the fight's outset. Appellant was unharmed in this first exchange. Appellant also stated that Edwards *never* struck him with punch and that his only wound came from the knife closing on one of his fingers. Although appellant testified that Edwards threatened him with a gun—supposedly located in Edwards's car—police officers found no gun.

Reconciling appellant's testimony with Edwards's and the rest of the State's witnesses' testimonies, a rational jury could have determined that appellant's version of events was unlikely. *See Wyatt,* 23 S.W.3d at 30. Moreover, the jury was free to reject appellant's claims that Edwards threatened him with, and attempted to retrieve, a non-existent firearm. *See Saxon*, 804 S.W.2d at 913.

We cannot say the evidence of guilt considered by itself is too weak to support the finding of guilt beyond a reasonable doubt, or that the contrary evidence—evidence favoring appellant's theory—is strong enough that the State could not satisfy its burden of proof beyond a reasonable doubt. *See Matlock*, 392 S.W.3d at 672; *Zuniga*, 144 S.W.3d at 484; *see also Yarborough*, 178 S.W.3d at 905. We overrule appellant's issue.

III. CONCLUSION

We affirm the trial court's judgment.

GREGORY T. PERKES
Justice

Do not publish.
TEX. R. APP. P. 47.2(b).

Delivered and filed the
14th day of July, 2016.