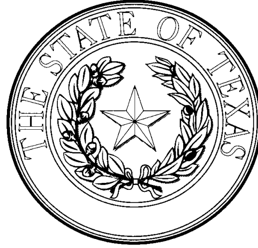
Opinion issued June 23, 2020.



In The

Court of Appeals

For The

First District of Texas

NO. 01-19-00200-CR

ALAIN PAREDES-RUIZ, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the 177th District Court
Harris County, Texas
Trial Court Case No. 1405821

MEMORANDUM OPINION

A jury convicted appellant Alain Paredes-Ruiz of murder and assessed his punishment at twenty-one years' imprisonment. In two issues, appellant argues that: (1) the trial court erred by denying his motion for directed verdict because the evidence is insufficient to support his conviction, and (2) he was denied effective

assistance of counsel based on his counsel's decision to have appellant testify during the guilt-innocence phase of trial and admit to firing the gun at the complainant. Finding no reversible error, we affirm the trial court's judgment.

Procedural Background

Appellant was indicted for the murder of Wilfredo Salinas in 2013. At his first trial in 2016, the jury found him guilty and assessed his punishment at thirty years' incarceration. On appeal, this Court held that the trial court's erroneous denial of appellant's request for an instruction on the lesser-included offense of manslaughter was harmful to appellant and we reversed his 2016 conviction and remanded the case for a new trial.[1] Appellant's second murder trial was in 2019.

Factual Background

The complainant, Wilfredo Salinas, went to a nightclub with his wife, Maria Ochoa, Maria's sisters, Iris and Nora Ochoa,[2] and their friend, Karen Antunez. At the club, the group made the acquaintance of Abrahim Ahmadi and his friend Naseer. Salinas and his six companions danced and partied until the club closed and then went to an after-hours club.

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[1] Because we resolved this issue in appellant's favor, we did not address his challenge to the trial court's denial of his request for a self-defense instruction. *See Paredes-Ruiz v. State*, No. 01-16-00712-CR, 2017 WL 5346422, at *1 (Tex. App.—Houston [1st Dist.] Nov. 14, 2017, no pet.) (mem. op., not designated for publication).

[2] Because they share a surname, Maria Ochoa, Iris Ochoa, and Nora Ochoa will be referred to by their first names.

Salinas escorted Maria to the ladies' restroom not long after they arrived at the after-hours club. When Maria exited the restroom, she saw Salinas arguing with appellant. Appellant then pushed Salinas, but before Salinas could respond, a bouncer grabbed Salinas by the neck and forcibly removed him from the club. The rest of the group followed Salinas out into the club's parking lot.

When appellant exited the club, he and Salinas began yelling and arguing with each other. Appellant brandished a handgun and pointed it at Salinas. Salinas, who was unarmed, challenged appellant to a fistfight. Ahmadi saw appellant pointing the gun as Salinas and tried to pull Salinas away and diffuse the situation. At that point, appellant walked away and headed towards a silver car parked nearby. Salinas and his group walked towards their vehicles.

According to Maria, appellant drove towards Salinas, stopped the car, and rolled down the passenger-side window. She saw a man, who later was identified as Honduras, sitting in the passenger seat of appellant's car. When Salinas walked over to the open window, appellant yelled at him. Maria saw Salinas make a hand gesture towards the car and then heard a gunshot. Maria testified that appellant was the shooter. Salinas, who had been shot in the chest, collapsed on the ground, and died shortly thereafter.

Nora testified that appellant drove up in a gray car and parked near where Maria and Salinas were standing. She saw appellant holding a gun and then she heard

a single gunshot. According to Nora, Salinas did not have a weapon or reach inside appellant's vehicle. Antunez also testified that the driver of the gray car shot Salinas.

Ahmadi, who had been standing next to Salinas when he was shot, wrote down the silver car's license plate number and gave it to the Houston Police Department (HPD) detectives who arrived at the scene. Using the vehicle's registration information, the detectives learned that the car was registered to appellant at the time of the shooting. When they went to appellant's address to question him, however, the apartment was vacant. Appellant's car was found four days after without any license plates and it had been registered to a new owner. Detective Ramon Cervantes testified that he was not able to interview appellant until eleven days after the shooting. Appellant, who had left Texas after the shooting, turned himself into law enforcement in Southern California.

Dr. Ana Lopez, the assistant medical examiner who conducted Salinas's autopsy and prepared the autopsy report, also testified at trial. According to Dr. Lopez, Salinas died from a single gunshot wound to the chest. Dr. Lopez testified that Salinas did not have any soot or gunpowder stippling on his body, which indicated to her that the shooter was at least 2 ½ to 3 feet away from Salinas when the gun was fired.

After the State rested its case-in-chief, appellant moved for a directed verdict on the ground that the State had failed to prove that he was the shooter. The trial court denied the motion.

Martha Zamora and Marvin Rodriguez were then called to testify in appellant's defense. Zamora, who was at the after-hours club the night of the shooting, testified that she saw Salinas go into the ladies' restroom multiple times with a woman and that Salinas became aggressive when the bouncer tried to stop him. According to Zamora, Salinas pushed the bouncer and had to be escorted out of the club. Rodriguez, a security guard at the after-hours club, testified that he saw some people arguing in the parking lot. According to Rodriguez, a woman was standing in front of appellant's car a when man jumped in the car through the passenger side window. Rodriguez heard a gunshot and went back inside the club.

After Rodriguez's testimony, the trial court called a five-minute recess to allow appellant's trial counsel time to "[c]onfer with [appellant] in detail." Appellant was called as a witness when the trial resumed.

Appellant testified that he confronted Salinas outside the ladies' restroom after he saw Salinas arguing with the club's owner. Salinas, who lunged at appellant, was then thrown out of the club. Appellant left shortly thereafter. As appellant was leaving, an acquaintance who appellant knew as "Honduras" handed appellant a handgun and warned appellant that someone wanted to fight him. As he walked to

his car, appellant was confronted by three people. Appellant pointed the gun at them and told them, "Don't come near because I have a weapon." When Salinas approached appellant moments later, appellant gave him a similar warning. Appellant then got into the driver's seat of his car and tried to drive away.

According to appellant, he backed the car out, but he could not leave the parking lot because Salinas and a woman were blocking the car. Appellant grabbed the gun and then stepped out of the car to make sure that he had not run over anyone. Honduras walked up to appellant's car, told appellant that they should leave, and then got in the passenger seat of appellant's car. Honduras rolled down the passenger-side window and told Salinas and the woman to get out of the way so that they could leave. According to appellant, Salinas was trying to get into the car through the passenger-side window. Appellant grabbed the gun, pointed it at Salinas and told Salinas to "get away." When Salinas tried to take the gun away from appellant, appellant shot him. According to appellant, he shot Salinas in self-defense, saying, "I fired [the gun] because he was coming at me to take it from me and I felt fear and I applied pressure to [the trigger]." "I did shoot him." Appellant admitted, however, that he had not seen Salinas's hand or chest enter the vehicle.

Appellant threw the gun out of the window as he drove home, gave his car to a friend the next morning, and bought a bus ticket to San Diego, California. From there, he crossed the border into Mexico, with plans to continue to his home country,

Cuba. Appellant, however, subsequently re-entered the United States and turned himself into law enforcement to be tried for Salinas's murder.

Sufficiency

In his first issue, appellant argues that the trial court erred by overruling his motion for directed verdict because the evidence is insufficient to prove that he is the person who shot Salinas and that he intended to shoot him.

A. Standard of Review and Applicable Law

A challenge to a trial court's ruling on a motion for a directed verdict is a challenge to the sufficiency of the evidence to support the conviction. *See Canales v. State*, 98 S.W.3d 690, 693 (Tex. Crim. App. 2003). We review an appellant's challenge to the sufficiency of the evidence under the standard enunciated in *Jackson v. Virginia*, 443 U.S. 307 (1979). *See Brooks v. State*, 323 S.W.3d 893, 895 (Tex. Crim. App. 2010). We examine all the evidence in the light most favorable to the jury's verdict to determine whether "any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *Jackson*, 443 U.S. at 319; *Merritt v. State*, 368 S.W.3d 516, 525 (Tex. Crim. App. 2012). Our review includes "the evidence presented at trial by both the State and appellant . . . ." *Cook v. State*, 858 S.W.2d 467, 470 (Tex. Crim. App. 1993) (directed verdict).

"The jury is the sole judge of credibility and weight to be attached to the testimony of witnesses." *Merritt*, 368 S.W.3d at 525 (citing *Jackson*, 443 U.S. at

319). As the sole factfinder, the jury may reasonably infer facts from the evidence presented, credit the witnesses it chooses, disbelieve any or all of the evidence or testimony proffered, and weigh the evidence as it sees fit. *See Canfield v. State*, 429 S.W.3d 54, 65 (Tex. App.—Houston [1st Dist.] 2014, pet. ref'd); *see also Chambers v. State*, 805 S.W.2d 459, 461 (Tex. Crim. App. 1991). We presume that the jury resolved any conflicting inferences in favor of the verdict and defer to that resolution. *See Jackson*, 443 U.S. at 326. Our role is to determine whether the jury's "inferences are reasonable based upon the combined and cumulative force of all the evidence when viewed in the light most favorable to the verdict." *Hooper v. State*, 214 S.W.3d 9, 17 (Tex. Crim. App. 2007). In viewing the record, direct and circumstantial evidence are treated equally. *Id.* at 13.

A person commits murder, as alleged in the indictment, if he intentionally or knowingly causes the death of an individual, or if he intends to cause serious bodily injury and intentionally or knowingly commits an act clearly dangerous to human life that causes the death of an individual. *See* TEX. PENAL CODE § 19.02(b)(1)–(2).

"Intent is almost always proven by circumstantial evidence." *Trevino v. State*, 228 S.W.3d 729, 736 (Tex. App.—Corpus Christi—Edinburg 2006, pet. ref'd). "Direct evidence of the requisite intent is not required . . . ." *Hart v. State*, 89 S.W.3d 61, 64 (Tex. Crim. App. 2002). Finders of fact are allowed to "infer intent from any facts which tend to prove its existence, including the acts, words, and

conduct of the accused, and the method of committing the crime and from the nature of wounds inflicted on the victims." *Id.* (quoting *Manrique v. State*, 994 S.W.2d 640, 649 (Tex. Crim. App. 1999) (Meyers, J., concurring)). A jury may also infer knowledge from such evidence. *See Stahle v. State*, 970 S.W.2d 682, 687 (Tex. App.—Dallas 1998, pet. ref'd).

Further, the intent to kill a complainant may be inferred from the use of a deadly weapon in a deadly manner. *Adanandus v. State*, 866 S.W.2d 210, 215 (Tex. Crim. App. 1993); *Watkins v. State*, 333 S.W.3d 771, 781 (Tex. App.—Waco 2010, pet. ref'd). If the defendant uses a deadly weapon in a deadly manner, the inference of intent to kill is almost conclusive. *See Adanandus*, 866 S.W.2d at 215; *Watkins*, 333 S.W.3d at 781; *Trevino*, 228 S.W.3d at 736. A firearm is a deadly weapon per se. *See* TEX. PENAL CODE § 1.07(a)(17).

B. Analysis

Appellant admitted to shooting Salinas, albeit in self-defense. Specifically, appellant testified that he shot Salinas with a handgun because Salinas was coming at him and appellant was scared that Salinas was trying to take the gun away from him. Appellant's testimony, standing alone, is more than a scintilla of evidence that he intentionally shot Salinas with the requisite intent to kill or cause serious bodily injury. *See Adanandus*, 866 S.W.2d at 215 (holding inference of intent to kill is

almost conclusive if defendant uses deadly weapon in deadly manner); *see also* TEX. PENAL CODE § 1.07(a)(17) (stating firearm is deadly weapon per se).

Even if we disregarded appellant's testimony and limited our analysis to the evidence presented in the State's case-in-chief, the evidence is still sufficient to prove identity and intent. Specifically, Ahmadi saw appellant get into a silver car and drive over to where Salinas was standing in the parking lot. He also saw Salinas walk up to the passenger side window and argue with appellant. Ahmadi, who was trying to pull Salinas away from the silver car when Salinas was shot, gave the car's license plate number to HPD. Detectives investigating Salinas's murder determined that the vehicle was owned by appellant at the time of the shooting and compiled a photo array. Maria, Salinas' wife, identified appellant as the shooter from a photo array six days after the shooting and during trial. Nora also testified that appellant was driving a gray car and she saw appellant holding a gun when he drove over to where Salinas was standing. Antunez testified that the driver of the gray car shot Salinas. The jury could have inferred that appellant intended to kill Salinas based on his testimony and that of other witnesses, thereby demonstrating that appellant shot Salinas with a handgun. *See Adanandus*, 866 S.W.2d at 215; *Watkins*, 333 S.W.3d at 781; *see also* TEX. PENAL CODE § 1.07(a)(17).

After examining all the evidence in the light most favorable to the jury's verdict, we conclude that a rational factfinder could have found the essential

elements of the crime beyond a reasonable doubt. *See Jackson*, 443 U.S. at 318–19; *Merritt*, 368 S.W.3d at 525. Because there is sufficient evidence supporting the verdict, the trial court did not err by denying appellant's motion for directed verdict.

We overrule appellant's first issue.

Ineffective Assistance of Counsel

In his second issue, appellant argues that he was denied the effective assistance of trial counsel "due to the decision of defense counsel to have Appellant testify at trial and to have him admit to firing the gun at [Salinas]."

A. Standard of Review

The standard of review for evaluating claims of ineffective assistance of counsel as set forth in *Strickland v. Washington*, 466 U.S. 668 (1984). Under the *Strickland* two-step analysis, a defendant must demonstrate that (1) his counsel's performance fell below an objective standard of reasonableness and (2) there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. *Id.* at 687–88, 694; *Andrews v. State*, 159 S.W.3d 98, 101–02 (Tex. Crim. App. 2005). "A reasonable probability is a probability sufficient to undermine confidence in the outcome." *Strickland*, 466 U.S. at 694. Failure to make the required showing of either deficient performance or sufficient prejudice defeats the ineffectiveness claim. *See Williams v. State*, 301 S.W.3d 675, 687 (Tex. Crim. App. 2009); *Andrews*, 159 S.W.3d at 101.

"An appellant bears the burden of proving by a preponderance of the evidence that counsel was ineffective." *Thompson v. State*, 9 S.W.3d 808, 813 (Tex. Crim. App. 1999). "[A]ny allegation of ineffectiveness must be firmly founded in the record, and the record must affirmatively demonstrate the alleged ineffectiveness." *Id.* at 814 (quoting *McFarland v. State*, 928 S.W.2d 482, 500 (Tex. Crim. App. 1996)). In reviewing counsel's performance, we look to the totality of the representation to determine the effectiveness of counsel, indulging a strong presumption that counsel's performance is within a wide range of reasonable professional assistance and trial strategy. *See Robertson v. State*, 187 S.W.3d 475, 482–83 (Tex. Crim. App. 2006); *Thompson*, 9 S.W.3d at 813. To warrant reversal when trial counsel has not been afforded an opportunity to explain his reasons, we will not conclude that a defendant received ineffective assistance unless the challenged conduct was "so outrageous that no competent attorney would have engaged in it." *See Goodspeed v. State*, 187 S.W.3d 390, 392 (Tex. Crim. App. 2005).

B. Analysis

Appellant argues that his trial counsel was ineffective because he decided to have appellant testify at trial and "to have him admit to firing the gun at the complainant." According to appellant, this testimony only "served to erase any doubt whatsoever that Appellant had actually fired the shot that killed the complainant,"

and trial counsel's "failure to recognize the severely damaging nature of this evidence prior to its introduction" and prevent its admission "cannot be explained by any conceivable trial strategy."

The record reflects that appellant's trial counsel requested and received a jury instruction on self-defense.[3] Self-defense is a confession-and-avoidance or justification type of defense. *See Juarez v. State*, 308 S.W.3d 398, 401–02 (Tex. Crim. App. 2010); *see also* TEX. PENAL CODE § 9.31. To be entitled to a self-defense instruction, the defensive evidence must admit to the underlying conduct and requisite culpable mental state underlying the charged offense. *See Juarez*, 308 S.W.3d at 405–06. The fact that counsel's self-defense strategy was unsuccessful does not mean that trial counsel was ineffective for pursuing that strategy. This is especially true because challenging appellant's identity as the shooter would have been very difficult given the direct and circumstantial evidence from multiple witnesses to that fact. *See Bahr v. State*, 295 S.W.3d 701, 713–14 (Tex. App.—Amarillo 2009, pet. ref'd) ("We will not judge trial counsel's strategy through the prism of hindsight and declare that, because the outcome was unsuccessful, it must have been ineffective."). Based on the record before us, we cannot say that trial counsel's conduct of allowing appellant to admit to intentionally shooting Salinas

[3] The trial court had denied appellant's request for a self-defense instruction during appellant's first trial.

was so outrageous that no competent attorney would have engaged in it. *See Goodspeed*, 187 S.W.3d at 392. Therefore, we conclude that appellant has not demonstrated that his trial counsel's performance fell below an objective standard of reasonableness; thus, he has not satisfied the first *Strickland* prong. We hold that appellant has failed to show, by a preponderance of the evidence, that he received ineffective assistance of counsel at trial. *See Strickland*, 466 U.S. at 687–88, 694.

We overrule appellant's second issue.

Conclusion

We affirm the trial court's judgment.

Russell Lloyd
Justice

Panel consists of Chief Justice Radack and Justices Lloyd and Countiss.

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