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

No. 06-19-00273-CR

JEFFERY DENVENCO VALENTINE, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the 71st District Court
Harrison County, Texas
Trial Court No. 18-0027X

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

MEMORANDUM OPINION

In his sole point of error on appeal, Jeffrey Denvenco Valentine argues that the trial court erred in rejecting his justification of necessity. Because we find that Valentine never raised this justification with the trial court, we affirm the trial court's judgment.

Valentine pled guilty to driving while intoxicated, third or more. In accordance with his plea bargain agreement, the trial court sentenced Valentine to five years' imprisonment and ordered him to pay a $2,500.00 fine but suspended the sentence in favor of placing him on community supervision for five years. The terms and conditions of Valentine's community supervision prevented him from operating a motor vehicle unless it was "equipped with a camera installed breath analysis mechanism (Interlock Device)." The State's motion to revoke Valentine's community supervision alleged that, in July and October 2019, he drove a vehicle that did not have an interlock device. After Valentine pled true to these allegations, the trial court sentenced Valentine to two years' imprisonment.[1]

At the revocation hearing, Valentine testified that he lived with his wife, Shirley, and daughter, Jayline, who was old enough to drive. Because Valentine had a suspended driver's license, he testified that Jayline, his brother, and his friends drove him around regularly. Even so, Valentine admitted that he drove his brother's truck, which did not have an interlock device, two times. On the first occasion, Valentine said he went to the store to get an antibiotic and antiseptic

[1]The trial court waived fines, attorney fees, and court costs.

for a horse that had run into barbed wire. On the second occasion, he drove himself to a community supervision meeting.[2] At no point did Valentine argue that his actions were justified by necessity.

Valentine raises the justification of necessity for the first time on appeal. The State argues that his sole issue was unpreserved. We agree. To preserve a complaint for our review, a party must first present to the trial court a timely request or motion stating the specific grounds for the desired ruling if not apparent from the context. TEX. R. APP. P. 33.1(a)(1). Here, because Valentine never mentioned the justification of necessity, the issue was unpreserved, and the trial court was under no independent duty to consider it. *See id.*; *Vega v. State*, 394 S.W.3d 514, 519 (Tex. Crim. App. 2013); *see also Hubbard v. State*, 133 S.W.3d 797, 801 (Tex. App.—Texarkana 2004, pet. ref'd) (to raise this issue, a defendant must admit to committing the offense and then offer necessity as a justification).

Moreover, Valentine was not entitled to use the necessity justification provided by Section 9.22 of the Texas Penal Code, which states,

> Conduct is justified if:
>
> (1) the actor reasonably believes the conduct is immediately necessary to avoid imminent harm;
>
> (2) the desirability and urgency of avoiding the harm clearly outweigh, according to ordinary standards of reasonableness, the harm sought to be prevented by the law proscribing the conduct; and
>
> (3) a legislative purpose to exclude the justification claimed for the conduct does not otherwise plainly appear.

[2]Valentine obtained a ride to the November community supervision meeting.

TEX. PENAL CODE ANN. § 9.22. This is because "[i]mminent harm must be shown by affirmative evidence," and Valentine presented no such evidence. *Kelso v. State*, 562 S.W.3d 120, 132 (Tex. App.—Texarkana 2018, pet. ref'd).

"'[I]mminent' means something that is immediate, something that is going to happen now." *Id.* (quoting *Murkledove v. State*, 437 S.W.3d 17, 25 (Tex. App.—Fort Worth 2014, pet. dism'd, untimely filed)). "Harm is imminent when there is an emergency situation and it is 'immediately necessary' to avoid that harm, in other words, when a 'split-second decision' is required without time to consider the law." *Id*. (quoting *Murkledove*, 437 S.W.3d at 25) (quoting *Pennington v. State*, 54 S.W.3d 852, 857 (Tex. App.—Fort Worth 2001, pet. ref'd)). "A threat of harm at some indefinite time in the future is insufficient to satisfy the requirement of imminence." *Id.*

Valentine testified that he violated the terms and conditions of his community supervision by driving to obtain medical supplies for a horse that had already been injured. Even assuming he could meet the second and third requirements of Section 9.22, Valentine introduced no testimony about the extent of the injuries to the horse that had already occurred, did not testify that the horse was in imminent danger, and did not testify that he believed driving to the store was immediately necessary to avoid imminent harm to the horse. As for his second violation of the same term and condition, there was no evidence of imminent harm when Valentine drove himself to the community supervision meeting.

We overrule Valentine's sole point of error because he failed to raise the necessity justification at the revocation hearing. As a result, we affirm the trial court's judgment.

Scott E. Stevens
Justice

Date Submitted: May 11, 2020
Date Decided: June 16, 2020

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