APPENDIX

APPENDIX

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COURT OF APPEALS OF TEXAS, FIRST DISTRICT, HOUSTON.

No. 01-19-00156-CR.

ANGEL LEE RANKIN,

Appellant,

v.

THE STATE OF TEXAS,

Appellee.

On Appeal from the 209th District Court, Harris County, Texas, Trial Court Case No. 1325037
District Judge: The Honorable Brian Warren

Decided February 2, 2019

Before: KEYES, *Justice*, KELLY, *Justice*, and LANDAU, *Justice*

(Opinion Issued: December 29, 2020)

Opinion

LANDAU, Justice

A jury convicted appellant, Angel Lee Rankin, of murder. After rejecting her claim of sudden passion, the jury assessed punishment at 15 years' confinement in the Institutional Division of the Texas Department of Criminal Justice. In four issues,

Rankin contends that (1) the trial court erred by denying her motion to suppress her statements, (2) the evidence is insufficient to defeat her self-defense claim, (3) the evidence is insufficient to support the jury's negative finding on sudden passion, and (4) the trial court erred by denying her motion for mistrial after a spectator's outburst during defense counsel's opening statements. We AFFIRM.

Background

The Stabbing Incident

One fall evening, Rankin went to the gas station to get snacks. Shortly after leaving her apartment complex, Rankin's car broke down. Her car was known for having "electrical problems with the wiring." Rankin always kept a pink paring knife in her car to open the hood because her car had been damaged in an accident. This occasion was no different.

Rankin called her 13-year-old daughter, M.R. She also called her boyfriend, Steven Willis, "a whole bunch of times" to help her jump start the disabled car because he was driving her Oldsmobile Cutlass. Willis eventually arrived, parked the Cutlass next to her car, and pushed her car into a washateria parking lot. While Willis retrieved the jumper cables from the trunk, Rankin took the knife from her knife kit to unlatch the hood. Meanwhile, M.R. went outside to check on her mother and saw Rankin and Willis in the washateria parking lot across the street. M.R. heard Willis "yelling" and saw him behaving "very

aggressively." She noticed that Willis's "nostrils had flared up" and that his "face turned very bright red" with "rage."

According to Rankin, Willis "had an attitude" and acted "bother[ed]" when he first arrived to help her. As she was trying to unlatch the hood, Rankin repeatedly asked Willis where he had been. He responded, "Shut the fuck up." Next, Rankin asked him why he had not answered her calls sooner. She continued to question him. Eventually, Rankin no longer wanted Willis to help her because he grew increasingly "frustrated." She told him, "You know what? Don't worry about it. I'll figure it out myself. But you will not take my car."

At that moment, M.R. saw Willis grab and lunge at Rankin. M.R. then "turned around and ran to get" a bat from their apartment. Meanwhile, Willis exclaimed, "Bitch, I'll kill you!" He grabbed Rankin's right wrist with his left hand, squeezed it, and began to choke her. He choked her for at least 30 seconds. Rankin begged Willis to release her neck and "cr[ied] out to God" because she started to "lose [her] breath" and felt like she "was about to die." Rankin struggled to pry her wrist from Willis's hand. Rankin still had the knife in her hand. When she broke free from his grasp, Rankin "called out for help from God," "took the knife," and "poked him once to get him off of" her. In describing what happened after she "poked" him with the knife, she explained:

> He lets go of me, he walks away, he gets back into the Cutlass, he starts the

> Cutlass, he reverses the Cutlass, he backs out of the position the car was in, to drive off. . . . When he gets to the intersection to exit the parking lot, he doesn't turn. The car stops. He puts the car in park, he gets out of the car, he walks a little bit behind the car, and he drops.

As Willis walked away, Rankin sat in her car and cried with the door open. When she noticed Willis fall to the ground, Rankin ran over to help him. Because Willis was unconscious and unresponsive, Rankin picked him up, "put him in the passenger seat of the Cutlass," and called 911. While on the phone with the 911 operator, Rankin decided that she could get to the hospital quicker than an ambulance. She "took off ... doing 95 [mph] down Fondren the whole way." By the time M.R. returned with the bat, she saw her mother's car there, but the Cutlass, her mother, and Willis were gone.

The Emergency Room Visit

Rankin and Willis arrived at the Southwest Hermann Memorial Hospital "six minutes" later. Willis had a stab wound to the chest and was unresponsive. The emergency room physician and other hospital workers carried him onto a stretcher and tried to resuscitate him by performing CPR.

A police officer sitting at the front desk of the hospital asked Rankin, "Who did this?" She responded, "I did." Houston Police Department

Detective A. Hernandez came to the hospital to investigate the cause of Willis's injuries. Police took Rankin's cell phone, identification, and other items from her. There is a dispute about whether officers immediately handcuffed Rankin. Detective Hernandez met with Rankin. She did not advise Rankin of her constitutional rights under *Miranda v. Arizona* before questioning her about the incident.

Rankin explained that she called Willis to assist her with her car troubles. She also told Detective Hernandez that an argument ensued. She did not, however, tell Detective Hernandez that Willis had choked her because she was "afraid that once he got out of the hospital, if they were to arrest him, he was going to come hurt [her]." After the argument, Rankin realized that the knife in her right hand had accidentally penetrated Willis's chest when he had bent over. She also told Detective Hernandez that Willis "walked away" towards the Cutlass, sat in the car and then got out again, "took off his shirt," "grabbed his chest," and "fell to the ground." That is when Rankin first called the police and then rushed Willis to the hospital.

Rankin's "story seemed incomplete" to Detective Hernandez. She called the District Attorney's Office to "discuss the case," but they declined to charge her. Afterwards, Detective Hernandez "contacted the Homicide Division and requested investigators come to the hospital." When the other officers arrived, Rankin signed consent forms authorizing officers to search and seize her car

and the Cutlass. Detective Hernandez handcuffed Rankin under Houston Police Department policy requiring officers to handcuff all persons transported for security. She drove Rankin to the Homicide Division for further questioning.

The Investigation

Officer R. Lujan met with Rankin. He told her that she was there voluntarily, she was not in any trouble, and he only wanted to get information about the incident. He did not read her *Miranda* warnings before taking her statement. Rankin repeated the version of events that she had given Detective Hernandez earlier, but she omitted the details about the argument and physical altercation. As before, Rankin never told Officer Lujan that Willis tried to choke or otherwise hurt her. Rankin did not appear injured. Officers returned her purse, identification, and cell phone to her and took her home after she gave her statement. Willis later died from his injuries.

The Suppression Hearing and Jury Trial

The State indicted Rankin for murder. Before trial, Rankin moved to suppress the statements she made to the officers. Rankin, Detective Hernandez, Officer Lujan, and Officer B. Evans testified at the suppression hearing. At the end of the hearing, the trial court denied Rankin's motion to suppress:

At this time, I'll find that the statement, although it did not comply with *Miranda*, that she was not under arrest or part of custodial interrogation and that it was voluntarily made. I find the statements by

Ms. Rankin made about her time in the video room are entirely inconsistent, which is what is on that video room, specifically about asking to call her daughter, specifically about asking to use the bathroom. The fact that she was transported in handcuffs alone does not rise to custodial interrogation.

At trial, during defense counsel's opening statement, a spectator yelled, "That's all lies!" Defense counsel immediately moved for a mistrial. Outside the presence of the jury, the trial court reprimanded the spectator and ordered him to leave the courtroom. After dismissing the spectator, the trial court denied the motion for mistrial.

Defense counsel then asked the trial court to instruct the jury to disregard the outburst, and the trial court gave the following instruction to the jury:

Ladies and gentlemen, sorry for the interruption. We're not sure—the person is not a witness and will not be returning to the courtroom. He is ordered to be—he will not be back in the courtroom during the proceedings of this case. The only thing that you may consider as evidence in this case is evidence that's introduced to you and evidence received from the witness stand. I'm going to instruct you to disregard the statements from the audience. All right?

The jury convicted Rankin of murder, rejected her claim of sudden passion, and assessed punishment at 15 years' confinement in the

Institutional Division of the Texas Department of Criminal Justice. This appeal followed.

Motion to Suppress

In her first issue, Rankin contends that the trial court erred by denying her motion to suppress her statements to police at the hospital and at the police station. She argues that admission of the inculpatory statements was error because she was in custody when she made the statements but the officers never provided her with statutory warnings under Article 15.17 or Article 38.22 of the Texas Code of Criminal Procedure. *See* TEX. CODE CRIM. PROC. arts.15.17, 38.22. The State maintains that the trial court did not err because Rankin was not in custody when she made the statements. The State does not dispute that officers did not read Rankin the statutory warnings.

A. Standard of review

We review a trial court's decision to deny a motion to suppress for an abuse of discretion. *Martinez v. State*, 348 S.W.3d 919, 922 (Tex. Crim. App. 2011). "We view the record in the light most favorable to the trial court's conclusion and reverse the judgment only if it is outside the zone of reasonable disagreement." *State v. Dixon*, 206 S.W.3d. 587, 590 (Tex. Crim. App. 2006). At a hearing on a motion to suppress, the trial court is the sole judge of the credibility of the witnesses and the "weight to be given their testimony." *Romero v. State*, 800 S.W.2d 539, 543 (Tex. Crim. App. 1990) (en banc). A trial

court's determination about whether a suspect is in custody presents a mixed question of law and fact. *Herrera v. State*, 241 S.W.3d 520, 526 (Tex. Crim. App. 2007). We therefore "afford almost total deference to a trial judge's 'custody' determination when the questions of historical fact turn on credibility and demeanor." *Id.* at 526–27. "Conversely, when the questions of historical fact do not turn on credibility and demeanor, we will review a trial judge's 'custody' determination *de novo*." *Id.* at 527.

B. Applicable law

Police must give warnings required by *Miranda* and the Texas Code of Criminal Procedure if a suspect is interrogated in custody. *Estrada v. State*, 313 S.W.3d 274, 293 (Tex. Crim. App. 2010). The prosecution may not use statements, whether exculpatory or inculpatory, stemming from custodial interrogation of the defendant unless it shows the use of procedural safeguards effective to secure the privilege against self-incrimination. *Miranda*, 384 U.S. at 444, 86 S.Ct. 1602. Additionally, Article 15.17 mandates an officer to provide the accused of warnings, including her right to retain counsel, right to remain silent, and right to terminate the interview at any time. *See* TEX. CODE CRIM. PROC. art. 15.17(a). Article 38.22 precludes the use of statements that result from custodial interrogation without compliance with its procedural safeguards. *See id.* art. 38.22, § 2(a) (no statement made as a result of a custodial interrogation will be admissible against the accused in a criminal proceeding unless, among other

things, officers administer statutory warnings to the accused before the accused gives a statement).

"The defendant bears the initial burden of proving that a statement was the product of 'custodial interrogation.'" *Herrera*, 241 S.W.3d at 526. "Custodial interrogation" means questioning initiated by police officers after a person has been taken into custody or otherwise deprived of his freedom of action in any significant way. *Miranda*, 384 U.S. at 444, 86 S.Ct. 1602; *Dowthitt v. State*, 931 S.W.2d 244, 254 (Tex. Crim. App. 1996) (citing *Stansbury v. California*, 511 U.S. 318, 322–25, 114 S.Ct. 1526, 128 L.Ed.2d 293 (1994) (per curiam)).

Four general situations suggest that a person may be in custody: (1) when the suspect is physically deprived of her freedom in any significant way; (2) when a law enforcement official tells the suspect that she cannot leave; (3) when law enforcement officials create a situation that would lead a reasonable person to believe there has been a significant restriction upon her freedom of movement; and (4) when there is probable cause to arrest and law enforcement officers do not tell the suspect that she is free to leave. *Shiflet v. State*, 732 S.W.2d 622, 629 (Tex. Crim. App. 1985) (en banc). For the first three situations, the "restriction upon freedom of movement must amount to the degree associated with an arrest as opposed to an investigative detention." *Dowthitt*, 931 S.W.2d at 255. For the fourth situation, the officers' knowledge of probable cause must be "manifested to the suspect." *Id.* This manifestation

could occur if some "information substantiating probable cause is related by the officers to the suspect or by the suspect to the officers." *Id.* And because probable cause is a "factor" in other cases, the fourth situation does not automatically establish custody. *Id.* Custody is established if the manifestation of probable cause, combined with other circumstances, would lead a reasonable person to believe that she is under restraint to the degree associated with an arrest. *Id.*

C. Custodial Interrogation

First, Rankin argues that she was in custody because she made a "pivotal admission of guilt." She asserts that she was "handcuffed as soon as she admitted responsibility for [Willis's] condition," placed in a room for "several hours," and "told she could not leave the room until the police arrived." She also asserts that she was not allowed to go to the restroom, was not free to leave, and was not allowed to call M.R., despite asking for those things. In response, the State argues that "the trial court questioned the veracity of [Rankin's] testimony and found her testimony to be incredible." For example, the State points out that the video of the interview does not show that the officers told Rankin she could not leave. Indeed, the video shows that she had spoken with her daughter twice that night despite Rankin's testifying that she was not allowed to call her daughter.

Rankin relies on *Ruth v. State*, 645 S.W.2d 432 (Tex. Crim. App. 1979). In *Ruth*, the Texas Court of Criminal Appeals held that an interrogation became custodial because the police officer had probable cause

to arrest him, considering that the suspect admitted to shooting the victim, explained his motive, and reenacted the offense. *Id.* at 435. The Court considered the police officer's subjective intent, the suspect's subjective belief, the investigation's focus, and whether there was probable cause for arrest. *Id.* at 436. The police officer did not give *Miranda* warnings and "inten[ded] to restrain the appellant until he made a statement." *Id.* This intention prompted the suspect's "subjective belief that he was required to answer [the questions]" and there was probable cause to arrest the suspect. *Id.* Based on the totality of these circumstances, the Court held that the suspect was in custody following the statement. *Id.*

Rankin's reliance on *Ruth* is misplaced. Witnesses testified that Rankin was not handcuffed or arrested. During the suppression hearing, Detective Hernandez testified that Rankin was not in handcuffs or under arrest when she arrived at the hospital. Officer Evans also testified that Rankin was not in handcuffs and not under arrest. Unlike the police officer in *Ruth*, the police officers here testified that they questioned Rankin to "gather more information" about the cause of Willis's injuries and tried to determine "how the event unfolded." Nothing in the record suggests that the officers intended to restrain Rankin until she made a statement. In fact, Detective Hernandez and Officer Evans both testified that Rankin was free to leave. Nor does the record show that the officers knew that the incident was more than a mere accident. Rankin testified that she

intentionally omitted the details relating to the choking from her statement. She was "afraid that once [Willis] got out of the hospital, if they were to arrest him, he was going to come hurt [her]."

The facts here are similar to those in *Estrada*. In *Estrada*, an officer questioned the defendant about his involvement in murders for five hours without first Mirandizing him. *Estrada*, 313 S.W.3d at 290, 292. The defendant incriminated himself. *Id.* at 290. The officer accused the defendant of lying and told him that he was free to leave, and the defendant acknowledged that he was there voluntarily and did not have to listen to the officer's accusations. *Id.* At that point, the defendant told the officer that he did not want to continue talking and that he wanted the police to give him a ride home. *Id.* The officer stopped questioning him and took him home. *Id.*

The Court of Criminal Appeals held that the defendant was not in custody for *Miranda* and Article 38.22 purposes. *Id.* at 295. The court reasoned that no reasonable person would believe that he could not leave. *Id.* The court determined the defendant could have "simply walked out" or "asked the police for a ride home," which he did. *Id.*

Like the defendant in *Estrada*, Rankin could have left the hospital or asked the police for a ride home, but she did not. The evidence suggests that the officers' encounter with Rankin was a consensual one. During a consensual encounter, an officer may initiate contact with a person without having an objective level of suspicion, question the person, and ask for

identification as long as the officer does "not convey a message that compliance with their requests is required." *Florida v. Bostick*, 501 U.S. 429, 434–35, 111 S.Ct. 2382, 115 L.Ed.2d 389 (1991). The officers here did just that. They contacted Rankin in person, asked her questions about the cause of Willis's stab wound, and took her identification. Nothing in the record shows that a reasonable person under these same circumstances would believe that she could not leave. For these reasons, Rankin has not proven that her "pivotal admission" was a product of custodial interrogation.

Second, Rankin argues that police physically prevented her from leaving the hospital because her "freedom of movement was restricted to a degree associated with [an] arrest." Rankin contends that, along with being handcuffed at the hospital, she was handcuffed while being transported to the Homicide Division and to her home, and this procedure was "inherently restrictive" after "admitting to a crime." Detective Hernandez explained that Houston Police Department's transport policy requires passengers to be handcuffed solely for security purposes.

When asked about her reason for transporting Rankin in handcuffs, Detective Hernandez explained:

A lot of people tend to be scared when handcuffs go on. So, I try to always tell people, you know, as easily as they go on is as easily as they come off. It doesn't mean you're under arrest, it just means I have to handcuff you.

The record reflects that Detective Hernandez did not handcuff Rankin for longer than was necessary to transport her from the hospital to the Homicide Division and from the Homicide Division to her home. She uncuffed Rankin as soon as she arrived at the destinations. Given the totality of these circumstances, the fact that she was transported in handcuffs alone does not constitute probable cause. *See State v. Sheppard*, 271 S.W.3d 281, 291 (Tex. Crim. App. 2008) (authorizing handcuffing suspect for reasonable amount of time to "safeguard the officers and assure the suspect's presence during a period of investigation").

Although we do not disagree with Rankin that the transportation policy must comport with the Fifth Amendment and that a consensual encounter may escalate to custodial interrogation, that did not happen here. *See Dowthitt*, 931 S.W.2d at 255. Moreover, "[s]tationhouse questioning does not, in and of itself, constitute custody." *Id.* (citing *California v. Beheler*, 463 U.S. 1121, 1124–25, 103 S.Ct. 3517, 77 L.Ed.2d 1275 (1983)). Despite Rankin's contention that she was handcuffed and prevented from leaving, it is up to the trial court to resolve any conflicts in the evidence. *State v. Ross*, 32 S.W.3d 853, 854–55 (Tex. Crim. App. 2000) (en banc). It was within the trial court's discretion to believe or disbelieve Rankin's testimony. *Id.* at 855. It was also within the trial court's discretion to believe or disbelieve Detective Hernandez and Officer Evans's testimony. *Id.* Because the trial court noted several inconsistencies in Rankin's testimony and because we afford almost

total deference to a trial court's fact-finding about whether she was in custody for Fifth Amendment purposes, we hold that Rankin did not establish that her statements were the product of custodial interrogation. *See Herrera*, 241 S.W.3d at 526.

Rankin also argues that she was physically prevented from leaving the hospital because her cell phone, identification, and purse were taken from her and that she could not leave because her car was being searched by law enforcement. She does not contend that officers subjected her to a coercive environment. As the United States Supreme Court noted, "Even when officers have no basis for suspecting a particular individual, they may ... ask to examine the individual's identification and ... request consent to search" her belongings, absent any threats or coercion. *Bostick*, 501 U.S. at 435, 111 S.Ct. 2382. The record reflects that Rankin voluntarily turned over her identification and other belongings and that she signed two consent forms authorizing officers to search the Cutlass as well as her other car. The consent forms that Rankin acknowledged reading and signing also informed her about her right to refuse.

The showing that a suspect has been warned that she does not have to consent to the search and has a right to refuse is of evidentiary value in determining whether a suspect validly consented. *See Allridge v. State*, 850 S.W.2d 471, 493 (Tex. Crim. App. 1991) (en banc). Thus, Rankin's encounter with the officers was consensual because she could have refused consent to search her vehicle and left, but she

did not. *See, e.g.,* Goines v. State, 888 S.W.2d 574, 578 (Tex. App.—Houston [1st Dist.] 1994, pet. ref'd) (detention was temporary, consensual encounter where officers took car keys from defendant and defendant signed consent form informing him of right to refuse consent to search his car). Rankin therefore has not established that officers physically prevented her from leaving.

Third, Rankin contends that her interrogation was custodial because the officers had probable cause to arrest her. According to Rankin, the officers had probable cause to arrest her because she admitted to causing Willis's injuries and because Detective Hernandez stated her "story seemed incomplete," called the District Attorney's Office, and enlisted the help of the Homicide Division.

The United States Supreme Court held that it is the "compulsive aspect of the custodial interrogation, and not the strength or content of the government's suspicions at the time the questioning [is] conducted" that determines custody for *Miranda* purposes. *Stansbury*, 511 U.S. at 323, 114 S.Ct. 1526. And, in this case, no compulsive aspect existed. Detective Hernandez testified that there was not "sufficient probable cause" to arrest Rankin. Even if Detective Hernandez suspected that Rankin had something to do with causing Willis's injuries, the District Attorney confirmed the lack of probable cause and rejected the charges against Rankin. Thus, there was no manifestation of probable cause that would have led Rankin to believe that she was under arrest.

Cf. Dowthitt, 931 S.W.2d at 255. We therefore conclude that the trial court did not err by denying Rankin's motion to suppress. The trial court's decision to deny her motion to suppress was within the zone of reasonable disagreement. *See Martinez*, 348 S.W.3d at 922. We overrule Rankin's first issue.

Sufficiency of Evidence

A. Self-Defense

In her second issue, Rankin challenges the legal and factual sufficiency of the evidence to support the jury's rejection of her self-defense claim because, according to Rankin, her use of force was reasonable and immediately necessary. Rankin argues that she stabbed Willis because she believed that he would choke her to death. She claims that the evidence supports a finding that she was a victim of domestic violence and acted in self-defense. Because Rankin raised self-defense, the State had to two tasks to convict her for murder: (1) prove the elements of murder beyond a reasonable doubt and (2) persuade the jury that Rankin did not kill Willis in self-defense. *See* Cleveland v. State, 177 S.W.3d 374, 379 (Tex. App.—Houston [1st Dist.] 2005, pet. ref'd) (en banc). Rankin contends that the evidence is legally and factually insufficient to support her conviction for murder because she acted in self-defense.

1. Standard of review

Because the State bears the burden of persuasion to negate self-defense by proving its case beyond a reasonable doubt, we review both legal and

factual sufficiency challenges to the jury's rejection of self-defense under the *Jackson v. Virginia* standard. *Brooks v. State*, 323 S.W.3d 893, 895 (Tex. Crim. App. 2010) (citing *Jackson v. Virginia*, 443 U.S. 307, 99 S.Ct. 2781, 61 L.Ed.2d 560 (1979)). Under that standard, "the relevant question 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." *See Jackson*, 443 U.S. at 319, 99 S.Ct. 2781; *Laster v. State*, 275 S.W.3d 512, 517 (Tex. Crim. App. 2009). Viewed in the light most favorable to the verdict, the evidence is insufficient under this standard when either: (1) the record contains no evidence, or merely a "modicum" of evidence, probative of an element of the offense; or (2) the evidence conclusively establishes a reasonable doubt. *See Jackson*, 443 U.S. at 314, 319 n.11, 320, 99 S.Ct. 2781; *Laster*, 275 S.W.3d at 518. "[We] may not re-evaluate the weight and credibility of the record evidence and thereby substitute its own judgment for that of the fact finder." *Williams v. State*, 235 S.W.3d 742, 750 (Tex. Crim. App. 2007). We defer to the jury "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, 99 S.Ct. 2781). We presume that the factfinder resolved any conflicting inferences in favor of the verdict, and we defer to that resolution. *Jackson*, 443 U.S. at 326, 99 S.Ct. 2781; *Clayton v. State*, 235 S.W.3d 772, 778 (Tex. Crim. App. 2007).

2. Applicable law

A person commits murder if she "intentionally or knowingly causes the death of an individual" or "intends to cause serious bodily injury and commits an act clearly dangerous to human life that causes the death of an individual." *See* TEX. PENAL CODE § 19.02(b)(1)–(2). The Penal Code also provides that "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." *Id.* § 9.31(a). Deadly force in self-defense is justified when a person reasonably believes the force is immediately necessary to protect the actor against the other's use or attempted use of unlawful deadly force or to prevent the other's imminent commission of murder, among other crimes. *Id.* § 9.32(a).

The defendant bears the of producing some evidence to support a claim of self-defense. *Braughton v. State*, 569 S.W.3d 592, 608 (Tex. Crim. App. 2018). Once the defendant produces some evidence raising self-defense, the State bears the burden of persuasion to show beyond a reasonable doubt that the defendant's actions were not justified. *Zuliani v. State*, 97 S.W.3d 589, 594 (Tex. Crim. App. 2003); *Saxton v. State*, 804 S.W.2d 910, 913 (Tex. Crim. App. 1991) (en banc). To meet its burden of persuasion, the State need not produce additional evidence but must prove its case beyond a reasonable doubt. *Saxton*, 804 S.W.2d at 913. The jury is the sole judge of the credibility of defensive evidence, and it is free to

accept it or reject it. *See Braughton*, 569 S.W.3d at 609 (citing *Saxton*, 804 S.W.2d at 914).

If the jury finds the defendant guilty, it has made an implicit finding against any defensive theory raised by the defendant. *Saxton*, 804 S.W.2d at 914; *see also Zuliani*, 97 S.W.3d at 594. "[A] defensive instruction is only appropriate when the defendant's defensive evidence essentially admits to every element of the offense *including* the culpable mental state, but interposes [a] justification to excuse the otherwise criminal conduct." *Shaw v. State*, 243 S.W.3d 647, 659 (Tex. Crim. App. 2007).

3. Denial of Self-Defense

Rankin testified that she acted in self-defense because she was a victim of domestic violence. Willis had a history of getting "upset" and starting arguments that turned into physical altercations. Although she had not seen any of the altercations, M.R. testified about witnessing Rankin's injuries she allegedly sustained from Willis before the stabbing incident. Photographs of Rankin's black eye and bruises were admitted into evidence. Rankin did not report this abuse because she was "scared" and "didn't want [Willis] to go to jail." Despite the physical abuse, Rankin stayed in the relationship with Willis because she "loved him" and "saw the good in him." Dr. V. Sloan, a clinical psychologist, testified that she had diagnosed Rankin with "post-traumatic stress disorder" because Rankin had a "long history as an adult of being in relationships with men who were

very violent, who were very abusive to her, who would swear and refer to her by obscenities."

Rankin also claimed that she acted in self-defense when Willis assaulted her on the day of the stabbing incident. After Rankin and Willis began arguing, M.R. saw Willis grab and lunge at Rankin. M.R. ran to their apartment to retrieve a bat to help her mother. With no witnesses in sight, Rankin testified that Willis shouted expletives at Rankin, grabbed her hand, and choked her. She felt like she "was about to die." Rankin struggled to loosen Willis's grip from her wrist. By her own admission, Rankin could free herself from Willis's grasp before using the knife she kept to pry the hood of her car open to "poke" him in the chest, even though she could have easily retreated to her apartment across the street. Willis then walked away, got in the car, and tried to drive away. Next, Willis parked the car, got out, and collapsed to the ground. Rankin realized that Willis was unconscious and unresponsive, called 911, and quickly rushed him to the hospital.

From Rankin's own testimony, a rational jury could have therefore concluded that deadly force was not immediately necessary for Rankin to defend herself from an unarmed man. *Mitchell v. State*, 590 S.W.3d 597, 604–05 (Tex. App.—Houston [1st Dist.] 2019, no pet.) (defendant not entitled to use deadly force when unarmed aggressor let defendant go before defendant picked up a gun and fired at victim); Sanchez v. State, 418 S.W.3d 302, 310 (Tex. App.—Fort Worth 2013, pet. ref'd) (defendant "acted out of

anger, not protective instinct, in pursuing the unarmed [complainant]"); Wilson v. State, No. 01-17-00788-CR, 2019 WL 346892, at *3 (Tex. App.—Houston [1st Dist.] Jan. 29, 2019, pet. ref'd) (mem. op., not designated for publication) (no evidence of self-defense when defendant shot man who stepped back and threw his hands up after wrestling with defendant).

The State presented evidence supporting the jury's rejection of Rankin's self-defense claim. Rankin never told officers that Willis was abusive, that he choked her, or that she stabbed him in self-defense. Officers observed no apparent injuries around her neck or wrist. Rankin ultimately "claimed to have no knowledge that [the stabbing] happened at the time it happened, had no intent, and claimed it was an accident," but changed her explanation at trial. To prove a claim of self-defense, the defendant must admit to having the intent to kill or cause serious bodily injury to the victim to save herself. *See Shaw*, 243 S.W.3d at 659. Rankin did not admit she intended to kill or seriously harm Willis. Rather, she said she "poked" Willis to get him off of her.

A rational jury also could have reasonably concluded that Rankin's failure during questioning to disclose their abusive relationship or that she "poked" him in the chest conflicted with her claim of self-defense at trial. The jury could have reasonably found Rankin incredible because she did not claim self-defense until she testified at trial. And, as a matter of law, Rankin had no right to a jury finding that she

killed Willis in self-defense because she did not admit to having the culpable mental state for murder. *See Shaw*, 243 S.W.3d at 659.

After reviewing all the evidence in the light most favorable to the verdict for legal sufficiency analysis, we conclude that a rational jury could have reasonably found against Rankin on self-defense beyond a reasonable doubt. *See Jackson*, 443 U.S. at 318–19, 99 S.Ct. 2781. We overrule Rankin's second issue.

B. Sudden Passion

In her third issue, Rankin contends the evidence is legally and factually insufficient to support the jury's finding at punishment that she did not kill Willis under the immediate influence of sudden passion.

1. Applicable law

At the punishment stage of a murder trial, a defendant may reduce a murder charge from a first-degree felony to a second-degree felony by proving by a preponderance of the evidence that she "caused the death under the immediate influence of sudden passion arising from an adequate cause." *See* TEX. PENAL CODE § 19.02(d); *see also* Hernandez v. State, 127 S.W.3d 206, 211–12 (Tex. App.—Houston [1st Dist.] 2003, pet. ref'd). " 'Sudden passion' means passion directly caused by and arising out of provocation by the individual killed or another acting with the person killed which passion arises at the time of the offense and is not solely the result of former

provocation." TEX. PENAL CODE § 19.02(a)(2). " 'Adequate cause' means cause that would commonly produce a degree of anger, rage, resentment, or terror in a person of ordinary temper, sufficient to render the mind incapable of cool reflection." *Id.* § 19.02(a)(1); *cf. Moncivais*, 425 S.W.3d at 407 (ordinary anger or fear alone does not raise an issue of sudden passion arising from adequate cause).

2. Legal sufficiency

a. Standard of review

In *Brooks*, the Court of Criminal Appeals held that the *Jackson v. Virginia* standard is the only standard that a reviewing court should apply in determining whether the evidence can support each element of a criminal offense that the State must prove beyond a reasonable doubt. *Brooks*, 323 S.W.3d at 895 (citing *Jackson*, 443 U.S. at 319, 99 S.Ct. 2781). We review issues on which the defendant had the burden of proof by a preponderance of the evidence, like sudden passion, under a different standard and apply the legal sufficiency standard used in civil cases. *See* Smith v. State, 355 S.W.3d 138, 147 (Tex. App.—Houston [1st Dist.] 2011, pet. ref'd).

We apply a two-step analysis under the civil legal sufficiency standard. *Moncivais v. State*, 425 S.W.3d 403, 407 (Tex. App.—Houston [1st Dist.] 2011, pet. ref'd). First, we review the record for any evidence that supports the jury's negative finding while ignoring all evidence to the contrary. *Id.* Second, if no evidence supports the negative finding, then we

examine the entire record to determine whether the evidence establishes the affirmative defense. *Id.* We must defer to the fact finder's determination of the weight and credibility to give the testimony and the evidence at trial. *See Cleveland*, 177 S.W.3d at 388–89.

b. Legally sufficient evidence of no sudden passion finding

In examining the record under the first prong of the civil legal sufficiency standard, we conclude that some evidence supports the jury's negative finding on sudden passion. The evidence at trial does not show that the Rankin acted under the immediate influence of sudden passion arising from an adequate cause. At most, Rankin said that she was "terrified," "scared," and "horrified" during their altercation based on their history of domestic violence. "For a claim of fear to rise to the level of sudden passion, the defendant's mind must be rendered incapable of cool reflection." *Gonzales v. State*, 717 S.W.2d 355, 357 (Tex. Crim. App. 1986) (en banc).

The record does not show that Rankin was "emotionally aroused" to the point that she would be incapable of a cool reflection period. *Id.* Instead, Rankin testified that she maintained that she remained calm and maintained her composure before, during, and after the stabbing. For example, Rankin testified that she defused the argument before she stabbed Willis when she noticed her questioning frustrated him. She rejected his help and opted to fix the car herself. Another example of Rankin's ability to

pause is that she "call[ed] out for help from God," despite losing her breath from Willis's chokehold. Rankin testified, "Like—just—something allowed my wrist to break free. And, when I did, I just took the knife and I poked him once." Even Rankin's mental state after the stabbing shows that she was capable of cool reflection. Rankin testified that she sat inside her car and started crying after Willis walked away. We therefore conclude that Rankin's own testimony does not support a finding that Rankin had acted under the immediate influence of sudden passion arising from adequate cause. *See Gonzales*, 717 S.W.2d at 357–58 (evidence legally sufficient to support jury's rejection of sudden passion because appellant "stayed cool and maintained his composure" throughout confrontation with victim).

The record satisfies the first prong of civil legal sufficiency standard of review because evidence exists that Rankin was not under the immediate influence of sudden passion when she stabbed Willis. *See Moncivais*, 425 S.W.3d at 408; *Cleveland*, 177 S.W.3d at 390. Thus, we need not address the second prong of the civil legal sufficiency standard—whether Rankin proved sudden passion—because that prong only applies if no evidence supports the jury's finding. *See Cleveland*, 177 S.W.3d at 389. We hold that the evidence is legally sufficient to support the jury's negative finding of sudden passion. *See Smith*, 355 S.W.3d at 147.

3. Factual sufficiency

a. Standard of review

In reviewing an issue on which the defendant has the burden of proof by a preponderance of the evidence, we apply the factual-sufficiency standard in *Meraz v. State*, 785 S.W.2d 146, 154–55 (Tex. Crim. App. 1990) (en banc). *See, e.g., Cleveland*, 177 S.W.3d at 390–91 (applying *Meraz* standard to review factual sufficiency of jury's negative sudden passion finding). "[T]he *Jackson v. Virginia* standard advanced in *Brooks* applies to a sufficiency review of the elements of the offense the State must prove beyond a reasonable doubt, not to the jury's negative finding of an issue on which the defendant had the burden of proof by a preponderance of the evidence." *Moncivais*, 425 S.W.3d at 408; *see Brooks*, 323 S.W.3d at 924 n. 67 (Cochran, J., concurring) (noting that factual sufficiency standard in *Meraz* is appropriate for review of issues like sudden passion on which defendant has burden of proof by preponderance of evidence). Under the *Meraz* standard, we review all of the evidence in a neutral light to determine whether the verdict is so against the great weight and preponderance of the evidence as to be "manifestly unjust, conscience-shocking, or clearly biased." *Matlock v. State*, 392 S.W.3d 662, 671 (Tex. Crim. App. 2013). "We may not, however, intrude on the fact finder's role as the sole judge of the weight and credibility of the witnesses' testimony." *Moncivais*, 425 S.W.3d at 408.

b. Factually sufficient evidence of no sudden passion finding

Rankin relies largely on her own testimony to argue that the jury's finding of no sudden passion was against the great weight and preponderance of the evidence. She essentially makes a self-defense argument. Rankin testified that she always kept a knife in her car to open its damaged hood because she often experienced electrical problems. She took out the same knife on the day of the incident to open her hood. She also testified that the argument escalated into a physical altercation—just like their past disputes—and Willis choked her before she "poked" him with the knife after feeling like she would die from strangulation. Rather than pursue Willis when he walked away, Rankin sat in her car and cried until she noticed Willis collapse to the ground. She called 911 and drove about 95 miles per hour to take Willis to the hospital for his stab wound.

The jury also heard other evidence from which it could have found sudden passion. M.R. testified that she peered outside the apartment because her mom was taking too long to return home. M.R. saw Willis drive into the parking lot across the street and park next to Rankin's car. M.R. also testified that she heard Willis yelling, saw him behaving aggressively, and noticed that "his nostrils had flared up" and that his "face turned very bright red" with "rage." Finally, M.R. testified that she saw Willis grab and lunge at Rankin, causing her to run back into the house to get a bat to defend her mother.

Several witnesses testified that Rankin omitted the details about the argument and physical altercation when she described to officers how she stabbed Willis. The jury could have reasonably believed Detective Hernandez and Officer Lujan's testimony that they did not see any injuries on Rankin, despite Willis standing six feet tall and weighing around 215 pounds when he had allegedly choked her. In other words, a violent attack by a large man would have left bruises, scratches, or other injuries so obvious that any ordinary person, let alone trained officers, would have inquired more about the cause.

As the sole judge of the weight and credibility of a witness's testimony, the jury had a right to believe the officers' testimony. And the jury had a right to disbelieve Rankin and M.R.'s testimony. *See Hernandez*, 127 S.W.3d at 214; *Moncivais*, 425 S.W.3d at 409; *Trevino v. State*, 157 S.W.3d 818, 822 (Tex. App.—Fort Worth 2005, no pet.) ("The jury was free to make its own determination of appellant's credibility and reject appellant's version of events if it did not believe he was telling the truth").

This is where the dissent goes wrong. A finding of sudden passion here depended on the jury accepting Rankin and M.R.'s version of events. *See, e.g., Smith v. State*, 355 S.W.3d 138, 149 (Tex. App. – Houston [1st Dist.] 2011, pet. *ref'd*). They did not.

The jury was free to doubt the defense's testimony as a matter of witness credibility, as a matter of lack of supporting physical evidence, or

because Rankin changed her story. *See id.*; *Hernandez*, 127 S.W.3d at 214. To hold otherwise is to substitute our judgment for that of the jury. Instead, without a contradictory showing from the record, we defer to the jury's determinations about the weight and credibility of the evidence. *Johnson v. State*, 23 S.W.3d 1, 8 (Tex. Crim. App. 2000) (en banc).

Viewing all of the evidence in a neutral light, we cannot say that the jury's finding of no sudden passion is so weak as to be manifestly unjust or against the great weight and preponderance of the evidence. *See Hernandez*, 127 S.W.3d at 213. We overrule Rankin's third issue.

Spectator Outburst

In her fourth issue, Rankin contends that the trial court abused its discretion when it refused to grant a mistrial after a spectator yelled "That's all lies!" during defense counsel's opening statements. She acknowledges that the trial court promptly instructed the jury to disregard, but she argues that there was "no adequate remedy for tainting the minds of the jury." The State responded that Rankin failed to show a reasonable probability that the words interfered with the jury's verdict.

A. Standard of review and applicable law

We review a trial court's denial of a mistrial for an abuse of discretion, and we must uphold a judge's decision denying a mistrial if it was in the zone of reasonable disagreement. *Archie v. State*, 340 S.W.3d 734, 738–39 (Tex. Crim. App. 2011); *see* Griffin v.

State, 571 S.W.3d 404, 416 (Tex. App.—Houston [1st Dist.] 2019, pet. ref'd). "A mistrial is required when the question is 'clearly calculated to inflame the minds of the jury and is of such character as to suggest the impossibility of withdrawing the impression produced on their minds.' " *Hernandez v. State*, 805 S.W.2d 409, 414 (Tex. Crim. App. 1990) (en banc) (quoting *Gonzales v. State*, 685 S.W.2d 47, 49 (Tex. Crim. App. 1985) (en banc)).

A mistrial occurs only in extreme circumstances where the prejudice is incurable. *Hawkins v. State*, 135 S.W.3d 72, 77 (Tex. Crim. App. 2004) (en banc). In determining whether a mistrial is warranted, we balance three factors: (1) the severity of the misconduct, (2) curative measures, and (3) the certainty of conviction without the misconduct. *See id.* at 75. A trial court's prompt instruction to the jury to disregard improper testimony will cure error. *See Ovalle v. State*, 13 S.W.3d 774, 783 (Tex. Crim. App. 2000) (en banc). We presume the jury followed the trial court's instructions to disregard the outburst. *Hernandez*, 805 S.W.2d at 414.

B. Denial of Mistrial

The audience member made a single, brief, unsolicited emotional statement before the trial court promptly reprimanded him and dismissed him from the courtroom. Afterwards, the trial court granted Rankin's request for a curative instruction and told the jury:

The only thing that you may consider as evidence in this case is evidence that's introduced to you and evidence received from the witness stand. I'm going to instruct you to disregard the statements from the audience.

We presume that the jury followed the trial court's instruction to disregard the spectator's outburst. *See Wesbrook v. State*, 29 S.W.3d 103, 116 (Tex. Crim. App. 2000) (en banc). Given the brief, isolated nature of the statement, the trial court's decision that any prejudice flowing from the statement was curable was within the zone of reasonable disagreement. We conclude the trial court did not abuse its discretion in denying Rankin's motion for mistrial. *See, e.g., Coble v. State*, 330 S.W.3d 253, 290–93 (Tex. Crim. App. 2010) (mistrial unwarranted when trial court instructed the jury to disregard outbursts of crying and expletives from two witnesses); *Gamboa v. State*, 296 S.W.3d 574, 580 (Tex. Crim. App. 2009) (no abuse of discretion when trial court denied defendant's request for a mistrial and instructed jury to disregard an outburst from victim's family member). We overrule Rankin's fourth issue.

Conclusion

We AFFIRM the trial court's judgment.

DISSENTING OPINION

KEYES, Justice, dissenting.

I respectfully dissent. This is a classic case of sudden passion, as appellant, Angel Lee Rankin, argues in her third issue. I would hold that Rankin proved her affirmative defense of sudden passion by a preponderance of the evidence, that a finding otherwise is against the great weight and preponderance of the evidence, and that, therefore, her offense should have been reduced to a second-degree felony. I would reverse and remand the case for a new punishment hearing.

Sudden Passion

A. Standard of Review

A person commits murder if she intentionally or knowingly causes the death of an individual or intends to cause serious bodily injury and commits an act clearly dangerous to human life that causes the death of an individual. *See* TEX. PENAL CODE ANN. § 19.02(b)(1)–(2). Typically, murder is a first-degree felony. *Id.* § 19.02(c). The Texas Penal Code provides, however, that

> [a]t the punishment stage of a [murder] trial, the defendant may raise the issue as to whether [s]he caused the death under the immediate influence of sudden passion arising from an adequate cause. If the defendant proves the issue in the affirmative by a preponderance of the evidence, the offense is a felony of the second degree.

Id. § 19.02(d); *Beltran v. State*, 472 S.W.3d 283, 289 (Tex. Crim. App. 2015). " 'Sudden passion' means passion directly caused by and arising out of provocation by the individual killed or another acting with the person killed which passion arises at the time of the offense and is not solely the result of former provocation." TEX. PENAL CODE ANN. § 19.02(a)(2); *Beltran*, 472 S.W.3d at 289. " 'Adequate cause' means cause that would commonly produce a degree of anger, rage, resentment, or terror in a person of ordinary temper, sufficient to render the mind incapable of cool reflection." TEX. PENAL CODE ANN. § 19.02(a)(1); *Beltran*, 472 S.W.3d at 289.

1. Initial inquiry: propriety of submission of sudden passion issue to the jury

The standard of review of sudden passion, in my view, must begin with an initial threshold inquiry to determine whether the submission of a jury instruction on sudden passion is supported by the record. This is important because it is in this context that the Court of Criminal Appeals has set out the statutory elements a defendant must prove to be entitled to the defense. If the issue of sudden passion is properly submitted, the jury's finding on the issue is adverse to sudden passion, and, as here, the defendant complains on appeal that she proved the affirmative defense of sudden passion, the reviewing court must then review the evidence to determine whether legally or factually sufficient evidence exists to support the adverse finding on sudden passion. If

the adverse finding on sudden passion is not supported by legally or factually sufficient evidence, then the charge against the defendant must be reduced to a second-degree felony.

To justify the submission of a jury instruction on sudden passion at the punishment phase, the record must at least minimally support an inference: 1) that the defendant in fact acted under the immediate influence of a passion such as terror, anger, rage, or resentment; 2) that [her] sudden passion was in fact induced by some provocation by the deceased or another acting with him, which provocation would commonly produce such a passion in a person of ordinary temper; 3) that [s]he committed the murder before regaining [her] capacity for cool reflection; and 4) that a causal connection existed "between the provocation, passion, and homicide."

Beltran, 472 S.W.3d at 289–90 (quoting *Wooten v. State*, 400 S.W.3d 601, 605 (Tex. Crim. App. 2013)); *see* TEX. PENAL CODE ANN. § 19.02(a), (d). The evidence supporting submission of a jury instruction on the sudden passion defense will satisfy the defendant's burden of production even if it is "weak, impeached, contradicted, or unbelievable," and it may arise from any source, during either phase of trial. *Beltran*, 472 S.W.3d at 290. The defendant's testimony alone is sufficient to raise the issue and require an instruction in the charge. *Id.*

In considering whether the defendant was entitled to a sudden passion charge, "[a]n appellate

court's duty is to look at the evidence supporting the charge of sudden passion, not the evidence refuting it." *Id.* at 294; *see id.* at 293–95 (holding that evidence supported defendant's requested jury instruction on sudden passion where there was evidence that (1) defendant acted under immediate influence of terror, testifying that he "panicked" and was "screaming in panic" when he awoke to find complainant behind him licking his anus, thus (2) providing evidence of provocation by complainant that (3) could have rendered defendant incapable of cool reflection before acting, where (4) jury could arguably have deduced, from defendant's testimony, that complainant's sexual assault triggered chain reaction that resulted in defendant's crying and panicked screaming and, ultimately, in complainant's stabbing death); *see also Trevino v. State*, 100 S.W.3d 232, 234–35, 239–41 (Tex. Crim. App. 2003) (holding that defendant was entitled to jury charge on sudden passion where detective testified that defendant informed him (1) he had altercation with complainant over phone numbers of other women she found in his wallet; (2) she confronted defendant with gun and pulled trigger; (3) defendant retrieved his own gun, and complainant was shot during struggle for guns; (4) defendant's sister testified that when defendant called her after shooting occurred he "was freaking out" and, when she arrived, she found defendant "crying and shaking"; and (5) another detective testified that when he entered defendant's home, defendant was kneeling over complainant and said, "you gotta help her").

The question whether the defendant accidentally killed the victim or killed the victim in self-defense does not preclude a jury charge on sudden passion at the punishment phase of trial where both accident and self-defense are asserted by the defendant and rejected by the jury at the guilt/innocence phase if these defenses are supported by some evidence. *Trevino*, 100 S.W.3d at 239–40; *see Beltran*, 472 S.W.3d at 290 (stating that "sudden passion and self-defense are not mutually exclusive" and that jury's rejection of self-defense theory at guilt-innocence phase does not preclude submission of sudden passion issue at punishment phase).

When considering whether there is "some" evidence of sudden passion presented at trial to justify a sudden passion charge, it is error to look solely to the evidence against sudden passion. *Trevino*, 100 S.W.3d at 238–39. Rather, "an appellate court's duty is to look at the evidence supporting that charge, not [at] the evidence refuting it." *Id.* The defendant is entitled to the charge so long as some evidence supports it, "regardless of whether it conflicted with other evidence, including some evidence of an accidental shooting," or, as here, an accidental stabbing. *See id.* at 240. It is also error for a court of appeals to hold that no charge of sudden passion should be given because a defendant has denied at trial the specific intent to kill. *Id.* at 236–37, 240 (noting that earlier cases holding that denial of intent to kill precluded charge on sudden passion were decided on basis of prior law before Legislature eliminated offense of voluntary manslaughter for

defendant acting "under the immediate influence of sudden passion arising from an adequate cause" and replaced it with punishment issue in murder statute).

Once it is ascertained that the charge of sudden passion was properly submitted to the jury, the appellate court's task turns to determining whether the evidence is legally or factually sufficient to support reducing the charge from the first-degree felony of murder to a second-degree felony due to sudden passion.

2. Legal sufficiency of evidence of sudden passion

As sudden passion is an affirmative defense, Rankin, as defendant, had the burden of proof and the burden of persuasion by proving her defense by a preponderance of the evidence. *See* TEX. PENAL CODE ANN. § 2.04(d); *Meraz v. State*, 785 S.W.2d 146, 150 (Tex. Crim. App. 1990). This is the same standard of proof as that employed in civil cases. *Matlock v. State*, 392 S.W.3d 662, 667 (Tex. Crim. App. 2013). Thus,

> [w]hen an appellant asserts that there is no evidence to support an adverse finding on which she had the burden of proof [by a preponderance of the evidence, such as the sudden passion affirmative defense], we construe the issue as an assertion that the contrary was established as a matter of law. We first search the record for evidence favorable to the [adverse] finding, disregarding all contrary evidence *unless*

> *a reasonable factfinder could not*. If we find no evidence supporting the finding, we then determine whether the contrary was established as a matter of law. *Id.* at 669.

As the Court of Criminal Appeals has explained, [t]he final test for legal sufficiency must always be whether the evidence at trial would enable reasonable and fair-minded people to reach the verdict under review. Whether a reviewing court begins by considering all the evidence or only the evidence supporting the verdict, legal-sufficiency review in the proper light must credit favorable evidence if reasonable jurors could, and disregard contrary evidence unless reasonable jurors could not. *Id.* at 669 n.19 (quoting *City of Keller v. Wilson*, 168 S.W.3d 802, 827 (Tex. 2005)).

In reviewing the legal sufficiency of the evidence to support an adverse finding on the affirmative defense of sudden passion, the appellate court first looks for more than a mere scintilla of evidence that supports the jury's implied finding adverse to the affirmative defense and disregards all evidence supporting the defense unless a reasonable factfinder could not disregard that evidence. *See id.* at 669; *Moncivais v. State*, 425 S.W.3d 403, 407 (Tex. App.—Houston [1st Dist.] 2011, pet. ref'd); *Smith v. State*, 355 S.W.3d 138, 148 (Tex. App.—Houston [1st Dist.] 2011, pet. ref'd). If the record contains no evidence supporting the adverse finding on the affirmative defense, then the court examines the

record to determine whether the defendant established the affirmative defense as a matter of law. *Matlock*, 392 S.W.3d at 669–70; *Moncivais*, 425 S.W.3d at 407–08; *Smith*, 355 S.W.3d at 148. The reviewing court may conclude that the evidence is legally insufficient to support the jury's rejection of the defendant's affirmative defense only if the defendant conclusively proves his affirmative defense such that "no reasonable jury [would be] free to think otherwise." *Matlock*, 392 S.W.3d at 670 (quoting *Tanner v. Nationwide Mut. Fire Ins. Co.*, 289 S.W.3d 828, 830 (Tex. 2009)).

3. Factual sufficiency of evidence of sudden passion

Should the reviewing court determine that the affirmative defense of sudden passion is not established by the evidence as a matter of law, it may look to the factual sufficiency of the evidence to support the jury's adverse finding on the affirmative defense. In a factual-sufficiency review, the appellate court "views the entirety of the evidence in a neutral light, but it may not usurp the function of the jury by substituting its judgment in place of the jury's assessment of the weight and credibility of the witnesses' testimony." *Id.* at 671. When reversing on factual insufficiency grounds, the appellate court must set out the relevant evidence and explain "precisely how the contrary evidence greatly outweighs the evidence supporting the verdict," and it must clearly state "why the verdict is so much against the great weight of the evidence as to be manifestly

unjust, conscience-shocking, or clearly biased." *Id.* If the reviewing court so finds, it may reverse the trial court's judgment and remand the case for a new trial. *Id.* at 672.

The "seminal case" on the standard of review of factual sufficiency challenges to findings on affirmative defenses is *Meraz v. State. See Matlock*, 392 S.W.3d at 670–71. In *Meraz*, the Court of Criminal Appeals stated,

> [W]hen the courts of appeals are called upon to exercise their fact jurisdiction, that is, examine whether the appellant proved [her] affirmative defense or other fact issue where the law has designated that the defendant has the burden of proof by a preponderance of evidence, the correct standard of review is whether after considering all the evidence relevant to the issue at hand, the judgment is so against the great weight and preponderance of the evidence so as to be manifestly unjust.

785 S.W.2d. at 154–55 (overruling prior law). In establishing this standard, the court also made it clear that when an appellate court examines all the evidence concerning an affirmative defense and "then seeks to determine if any rational trier of fact could have found that the defendant failed to prove [her] defense by a preponderance of the evidence, it is using the same mental processes as it would have used had it utilized against the great weight and preponderance" of the evidence. *Id.* at 154. "The

'weight of the evidence' refers to 'a determination [by] the trier of fact that a greater amount of credible evidence supports one side of an issue or cause than the other.'" *Id.* at 156 (quoting *Tibbs v. Florida*, 457 U.S. 31, 37–38, 102 S.Ct. 2211, 72 L.Ed.2d 652 (1982)). Thus, by exercising its fact jurisdiction to decide whether a defendant has borne her burden of proof on an affirmative defense, such as sudden passion, the court of appeals does not usurp the function of the jury. *See id.* at 154; *Smith*, 355 S.W.3d at 148 ("In the factual sufficiency review of the evidence, we review all of the evidence neutrally, but we do not intrude on the factfinder's role as the sole judge of the weight and credibility given to any witness's testimony.").

Unlike a finding of legal insufficiency of the evidence, an appellate court's determination that the jury's finding on sudden passion is "against the great weight and preponderance of the evidence" does not necessitate an acquittal. *See Meraz*, 785 S.W.2d at 156 ("[A]n appellate court's disagreement with the jurors' weighing of the evidence does not require the special deference accorded verdicts of acquittal.") (quoting *Tibbs*, 457 U.S. at 42, 102 S.Ct. 2211). And that determination "does not prohibit a retrial if a conviction is reversed on the basis that the jury's rejection of a defendant's [affirmative defense] is against the great weight and preponderance of the evidence." *Id.* Thus, the responsibility of this Court in determining whether the jury's negative finding on sudden passion in the instant case is against the great weight and preponderance of the evidence is a heavy one.

B. Application of the Law to the Facts of the Case

1. Evidence supporting charge of sudden passion

Following the lead of the Court of Criminal Appeals, I would first determine whether some evidence from any source, even if weak or contradicted, supported the instruction on sudden passion submitted to the jury under the four-part test set out in *Beltran*, specifically, whether (1) Rankin "in fact acted under the immediate influence of a passion such as terror, anger, rage, or resentment"; (2) her sudden passion was in fact induced by some provocation by Willis, the complainant, and was the type of "provocation [that] would commonly produce such a passion in a person of ordinary temper"; (3) she committed the murder before regaining her capacity for cool reflection; and (4) "a causal connection existed 'between the provocation, passion, and homicide.' " *See Beltran*, 472 S.W.3d at 289–90.

Here, the evidence at trial showed that the battery in Rankin's car died just after she left home to go to the store to buy some snacks. She called her 13-year-old daughter, M.R., to tell her the car had broken down; and she called her boyfriend, Steven Willis, who was driving her other car, to come help her jump-start the car. She called Willis repeatedly, with no response. Rankin testified that when he finally arrived, he "had an attitude" and acted as though Rankin was "bothering him to come help [her]." Willis pushed her car into the parking lot of a washeteria and retrieved the jumper cables from the trunk while Rankin

retrieved a paring knife she had kept in the car since an earlier accident to unlatch the damaged hood. Rankin kept asking Willis where he had been and why he hadn't answered her calls, and he told her, "Shut the fuck up." She finally told him she did not want his help, that she would figure it out, but that he could not take her other car.

After Rankin and Willis began arguing, M.R., who had come outside to check on her mother, testified that she saw Willis grab and lunge at her mother. M.R. then left to retrieve a bat from their apartment. Rankin testified that Willis exclaimed, "Bitch, I'll kill you!" She stated that Willis grabbed her "right wrist with his left hand," "squeezed it," and began to "choke" her, and she stated that he choked her for "at least 30 seconds." Rankin started to "lose [her] breath" and felt like she "was about to die," so she pleaded with Willis to release her neck. Rankin, who still had the paring knife in her hand from attempting to open the hood of her car, testified that she struggled to pry her wrist from Willis's hand. When she managed to break free, she "called out for help from God," "took the knife," and "poked him once to get him off of" her. She stated, "I was terrified, I was scared, I was horrified."

I would find this testimony to provide some evidence that Rankin "in fact acted under the immediate influence of a passion such as terror, anger, rage, or resentment" arising out of her anger and frustration with Willis and with the situation. *See id.* at 290. I would also find these facts to be some evidence that sudden passion was in fact induced in

Rankin by some provocation by Willis, whether by his words or by his actions, and was the type of "provocation [that] would commonly produce such a passion in a person of ordinary temper." *See id.* And I would find these facts to be some evidence that Rankin committed the murder before regaining her capacity for cool reflection. *See id.*

Finally, describing what happened after she "poked" Willis with the knife, Rankin testified:

> He lets go of me, he walks away, he gets back into the Cutlass [the car Willis had driven to the scene], he starts the Cutlass, he reverses the Cutlass, he backs out of the position the car was in, to drive off. . . . When he gets to the intersection to exit the parking lot, he doesn't turn. The car stops. He puts the car in park, he gets out of the car, he walks a little bit behind the car, and he drops.

Rankin testified that as Willis walked away from her car, she sat in her car and cried with the door open. She noticed Willis fall to the ground, and she ran over to help him, but he was unconscious and unresponsive. Rankin put Willis in the passenger seat of the Cutlass and called 911. While she was speaking to the 911 operator, Rankin decided that she could get to the hospital quicker than an ambulance. She "took off," "doing 95 [mph] down Fondren the whole way." M.R. returned from the apartment with the bat and saw Rankin's car there, but the Cutlass, Rankin, and Willis were gone. However, several drops of blood

were subsequently found on the ground in the area where Rankin testified she picked Willis up and got him back into the car to drive to the hospital.

Taking this evidence as true for purposes of submitting the issue of sudden passion to the jury, I would find this to be some evidence that "a causal connection existed 'between the provocation, passion, and homicide,' " as opposed to a murder committed in cool reflection without circumstances causing passionate anger and frustration and without immediate provocation. *See id.*

In sum, I would find that Rankin submitted "some evidence" to support each of the elements of her sudden passion affirmative defense without considering its source or strength, thereby justifying the submission of the issue to the jury. Thus, I would turn to whether the evidence was legally sufficient to support the jury's adverse finding on the sudden passion issue.

2. Legal sufficiency of evidence of sudden passion

To determine whether the evidence was legally sufficient to support the jury's adverse finding on sudden passion, I would "first search the record for evidence favorable to the [adverse] finding, disregarding all contrary evidence *unless a reasonable factfinder could not*," and, if I found no evidence supporting the jury's adverse finding on sudden passion, I would then "determine whether the contrary was established as a matter of law." *See*

Matlock, 392 S.W.3d at 669; *Moncivais*, 425 S.W.3d at 407–08; *Smith*, 355 S.W.3d at 148.

Here, I agree with the majority that there was more than a scintilla of evidence to support the jury's adverse finding on sudden passion, but barely more, considering all four factors of sudden passion. Detective Hernandez, who questioned Rankin on the night Rankin stabbed Willis, testified that Rankin did not mention that Willis had choked her. Rankin herself testified that she did not tell Detective Hernandez because she was "afraid that once [Willis] got out of the hospital, if they were to arrest him, he was going to come hurt [her]." Instead, she told Officer R. Lujan that she realized later that the knife in her right hand had "accidentally" penetrated Willis's chest when he had bent over her. She changed her story at trial, however, and testified that she "poked" Willis to get him off of her. Also Lujan, who interviewed Rankin that night, testified that she did not tell him that Willis had tried to choke or otherwise hurt her, and she did not appear injured. He did not see any marks indicating she had been choked. Therefore, I conclude that more than a scintilla of evidence supported the jury's adverse finding on sudden passion—namely the officers' testimony and Rankin's changed story—so that the evidence was legally sufficient to support the jury's rejection of sudden passion. *See Matlock*, 392 S.W.3d at 669.

I would turn, therefore, to whether the evidence was factually sufficient to support the jury's adverse finding on sudden passion or whether that finding was

against the great weight and preponderance of the evidence presented at trial.

3. Factual sufficiency of evidence of sudden passion

Under *Meraz* and *Matlock*, factually insufficient evidence supports an adverse finding on an affirmative defense, such as sudden passion, if, when considering all of the evidence, the adverse finding was "so 'against the great weight and preponderance' of that evidence [as] to be manifestly unjust." *Matlock*, 392 S.W.3d at 671 (quoting *Meraz*, 785 S.W.2d at 154–55).

First, regardless of Rankin's testimony as to her state of mind and her intent, intent is typically inferred from the circumstances under which a culpable act is committed. *See Guevara v. State*, 152 S.W.3d 45, 50 (Tex. Crim. App. 2004) ("Intent may also be inferred from circumstantial evidence such as acts, words, and the conduct of the appellant."). And, in this case, there can be no doubt that the jury disbelieved Rankin's claim that she did not intend to kill Willis at the moment she stabbed him in that it convicted her of murder, an intentional crime. *See* TEX. PENAL CODE ANN. § 19.02(b)(1)–(2) (setting out *mens rea* of murder). The inquiry therefore turns to whether her crime met the sudden passion criteria under the circumstances in which it occurred. *Cf. id.* § 19.02(d) (providing for affirmative defense of sudden passion at punishment stage of trial after defendant has been found guilty of murder at guilt-innocence stage).

The evidence in this case clearly satisfies all four criteria for submitting the issue of sudden passion to the jury: (1) the unrebutted evidence overwhelmingly indicates that Rankin acted under the immediate influence of "terror, anger, rage, or resentment"; (2) the unrebutted evidence likewise shows that Willis provoked her anger and resentment by refusing to answer her calls, then, when he did arrive at the scene, refusing to tell her where he had been, acting "bothered" and unwilling to help her, and, by her and M.R.'s testimony, lunging at her and choking her, a "provocation [that] would commonly produce such a passion in a person of ordinary temper"; (3) she immediately committed the murder with the paring knife she held in her hand to open the hood as soon as she loosened Willis's grip on her neck and before she could have regained her capacity for cool reflection; and (4) clearly "a causal connection existed 'between the provocation, passion, and homicide.' " *See Beltran*, 472 S.W.3d at 289–90. So the question becomes how strong the evidence for and against sudden passion was in this case.

Rankin testified that she always kept a knife in her car to open its damaged hood because she often experienced electrical problems, and she had the knife in her hand to unlatch the hood as her altercation with Willis escalated. This fact argues strongly against a finding that Rankin planned to murder Willis and armed herself to do so. Instead, it is evidence that she was overtaken by sudden passion in that she used a paring knife she already had in her hand to "poke" Willis in the chest—not a weapon she had to fetch or

had brought to the scene for the purpose of stabbing Willis. And that she was able to thrust that short knife into his chest before he could ward off the blow indicates that he was very close to her when she stabbed him, as Rankin testified.

There was also evidence that Rankin was the victim of domestic violence at the hands of Willis, and photographs of Rankin's black eye and bruises from a previous altercation were admitted into evidence. This evidence, while insufficient in itself to support a finding of sudden passion, does support the inference that Rankin had reason to fear Willis and that Willis had a history of harming Rankin when angry. Rankin testified that, in this case, the argument escalated into a physical altercation—just as in their past disputes—and Willis choked her before she "poked" him with the knife after feeling like she would die from strangulation, supporting her claims of both passion and provocation. There is no contravening evidence other than Rankin's failure to tell the police who interviewed her that she had been choked and their failing to notice signs of choking on their own. And M.R.'s testimony that she ran to retrieve a bat to get Willis off her mother is corroborating evidence that Rankin's story was true—as is the evidence of the marks found on her neck and wrist that night.

Rankin also told Detective Hernandez that Willis walked away towards the Cutlass, sat in the car and then got out again, "took off his shirt," "grabbed his chest," and fell to the ground. That is when Rankin first called the police and then rushed Willis to the

hospital. Rather than pursue Willis when he walked away, Rankin sat in her car and cried until she noticed Willis collapse to the ground. She called 911 and drove about 95 miles per hour to take Willis to the hospital for his stab wound. There is no contrary evidence as to what happened and the sequence of events. Rather, Rankin's story is supported by the evidence that several drops of blood were subsequently found on the ground in the area where Rankin testified she picked Willis up and got him back into the car to drive to the hospital. And it is undisputed that she did, in fact, call the police when she saw him stop the car and collapse and that she immediately rushed him to the hospital in an effort to save him. These are all exactly the types of actions that supported submission of a jury instruction on sudden passion in both *Beltran* and *Trevino*, and they support a finding of sudden passion here where, again, there is no contrary evidence.

In short, there is no evidence to support the conclusion that Rankin did *not* act out of sudden passion but acted in cool reflection. The only evidence to the contrary is that she held back details of her story from the police who interrogated her by not reporting that Willis choked her or showing signs of choking that they noticed on their own. But whether Willis choked her or not, there is absolutely no evidence to support the conclusion that she brought her knife to the scene to stab him, that she was not angry and frustrated when she stabbed him, and that she intended to kill him.

The jury also heard other evidence from which it could have found sudden passion. M.R. testified that she peered outside the apartment because her mom was taking too long to return home. She saw Willis drive into the parking lot across the street and park next to Rankin's car. M.R. also testified that she heard Willis yelling, saw him behaving aggressively, and noticed that "his nostrils had flared up" and that his face turned "very bright red" with "rage." Finally, M.R. testified that she saw Willis grab and lunge at Rankin, causing her to run back into the house to get a bat to defend her mother. And photographs taken of Rankin that night and admitted into evidence showed several red marks on her neck and wrist.

Although the officers who interviewed Rankin on the evening of the stabbing testified that Rankin omitted the details about the argument and physical altercation when she described to them how she stabbed Willis and that she varied her story, and although they testified that they did not see any signs of injury to her, this is not in itself evidence that things did not occur as Rankin and M.R. testified. Their accounts of the material facts are not only consistent with each other but supported by physical evidence. Even if a reasonable jury believed that Rankin was not telling the truth when she said Willis choked her, it would still have to disregard the physical evidence of the marks on her neck and wrist.

Also, importantly, no evidence regarding the circumstances under which Willis was killed supports the *mens rea* of murder prepared for in advance and

committed in cool reflection; instead, the uncontroverted evidence supports sudden passion even if Willis did not choke Rankin. That is, the uncontroverted evidence supports only the conclusion that Rankin was angry at Willis and frustrated by his refusal to answer her phone calls, his refusal to explain where he had been, and his language towards her. And this uncontroverted evidence supports the inference that it was this provocation that caused her to use the knife she was already holding in her hand to pry open the hood of her disabled car to "poke" Willis. The only reasonable inference from these facts is that "a causal connection existed 'between the provocation, passion, and homicide,' " as opposed to a murder committed in cool reflection under circumstances that did not indicate passionate anger and frustration at Willis's behavior, the immediate provocation for Rankin's stabbing him. *See Beltran*, 472 S.W.3d at 290.

I see no evidence to support an essentially different scenario with respect to any of the factors required to prove sudden passion as opposed to murder. Literally nothing supports the majority's characterization of the evidence set out above as showing that Rankin was capable of "cool reflection" before, during, and after the stabbing. Yet the majority characterizes Rankin's past history with Willis and her growing anger and frustration with him and telling him she would fix the car herself as evidence of her "cool reflection" before poking him with the knife. Op. at 185. It characterizes her " 'call[ing] out for help from God,' despite losing her

breath from Willis's chokehold' " as evidence of her "ability to pause" and coolly reflect as she "poked" him with the paring knife she had taken out to open the hood and still held in her hand. *Id.* at 185. It characterizes her sitting in her car and crying after the stabbing as "show[ing] that she was capable of cool reflection." *Id.* at 185. And it concludes from this that "Rankin's own testimony does not support a finding that Rankin had acted under the immediate influence of sudden passion arising from adequate cause." *Id.*

Yet these are exactly the type of facts that the Texas Court of Criminal Appeals has described as proof of sudden passion—not its direct opposite. *See Beltran*, 472 S.W.3d at 293–95 (holding that evidence supported defendant's requested jury instruction on sudden passion where there was evidence that (1) defendant acted under immediate influence of terror, testifying that he "panicked" and was "screaming in panic" when he awoke to find complainant behind him licking his anus, thus (2) providing evidence of provocation by complainant that (3) could have rendered defendant incapable of cool reflection before acting, where (4) jury could arguably have deduced, from defendant's testimony, that complainant's sexual assault triggered chain reaction that resulted in defendant's crying and panicked screaming and, ultimately, in complainant's stabbing death); *Trevino*, 100 S.W.3d at 234–35, 239–41 (holding that defendant was entitled to jury charge on sudden passion where detective testified that defendant informed him (1) he had altercation with complainant over phone numbers of other women she found in his

wallet; (2) she confronted defendant with gun and pulled trigger; (3) defendant retrieved his own gun, and complainant was shot during struggle for guns; (4) defendant's sister testified that when defendant called her after shooting occurred he "was freaking out" and, when she arrived, she found defendant "crying and shaking"; and (5) another detective testified that when he entered defendant's home, defendant was kneeling over complainant and said, "you gotta help her").

In my view, the majority's opinion is contradictory to the law. If its lead were to be followed, there could never be a sustainable jury finding of sudden passion, and the defendant's burden on sudden passion would be effectively raised to proof beyond a reasonable doubt. The defense would be negated by the very facts held by the Court of Criminal Appeals to sustain it.

Viewing all of the evidence in a neutral light, I would hold that the jury's finding adverse to Rankin's sudden passion defense was so against the great weight and preponderance of the evidence as to be manifestly unjust. *See Matlock*, 392 S.W.3d at 671. Accordingly, I would sustain Rankin's third issue.

Conclusion

I would reverse the trial court's judgment convicting appellant of murder, and I would remand the case for a new punishment hearing.

CAUSE NO. 1325037

IN THE 209TH DISTRICT COURT

OF HARRIS COUNTY, TEXAS

JANUARY TERM, A. D., 2019

THE STATE OF TEXAS

vs.

ANGEL LEE RANKIN

Members of the Jury:

Having found the defendant, Angel Lee Rankin, guilty of murder, it now becomes your duty to assess the punishment in this case.

Our statutes provide that the punishment for murder shall be by confinement in the institutional division of the Texas Department of Criminal Justice for not less than five years nor more than ninety-nine years or life. In addition thereto, a fine not to exceed $10,000.00 may be assessed.

Therefore, you will assess the punishment of the defendant upon said finding of guilt at confinement in the institutional division of the Texas Department of Criminal Justice for any term of not less than five years nor more than ninety-nine years or life, and the jury in its discretion may, if it chooses, assess a fine in any amount not to exceed $10,000.00.

SPECIAL ISSUE

Now, having found the defendant guilty of the offense of murder, you must determine from a preponderance of the evidence whether or not she caused the death under the immediate influence of sudden passion arising from an adequate cause.

The burden of proof is by a preponderance of the evidence, and that burden rests on the defendant. By the term "preponderance of the evidence" is meant the greater weight of the credible evidence.

"Sudden passion" means passion directly caused by and arising out of provocation by the individual killed or another acting with the person killed which passion arises at the time of the offense and is not solely the result of former provocation.

"Adequate cause" means cause that would commonly produce a degree of anger, rage, resentment, or terror in a person of ordinary temper, sufficient to render the mind incapable of cool reflection.

Now, bearing in mind the foregoing instruction, if you believe the defendant proved by a preponderance of the evidence that the defendant, having committed the offense of murder, caused the death of Steven Willis, under the immediate influence of sudden passion arising from an adequate cause, you must make an affirmative finding as to the special issue, and the punishment you must assess is by confinement in the institutional division of the Texas

Department of Criminal Justice for any term of not less than two years or more than twenty years. In addition, a fine not to exceed $10,000.00 may be imposed.

But if you do not believe the defendant proved by a preponderance of the evidence that the defendant, having committed the offense of murder, caused the death of Steven Willis, under the immediate influence of sudden passion arising from an adequate cause, you must make a negative finding as to the special issue, and the punishment you must assess is by confinement in the institutional division of the Texas Department of Criminal Justice for any term of not less than five years or more than ninety-nine years or life. In addition, a fine not to exceed $10,000.00 may be imposed.

Under the law applicable in this case, the defendant, if sentenced to a term of imprisonment, may earn time off the period of incarceration imposed through the award of good conduct time. Prison authorities may award good conduct time to a prisoner who exhibits good behavior, diligence in carrying out prison work assignments, and attempts at rehabilitation. If a prisoner engages in misconduct, prison authorities may also take away all or part of any good conduct time earned by the prisoner.

It is also possible that the length of time for which the defendant will be imprisoned might be reduced by the award of parole.

Under the law applicable in this case, if the defendant is sentenced to a term of imprisonment, she will not become eligible for parole until the actual time served equals one-half of the sentence imposed or thirty years, whichever is less, without consideration of any good conduct time he may earn. Eligibility for parole does not guarantee that parole will be granted.

It cannot accurately be predicted how the parole law and good conduct time might be applied to this defendant if she is sentenced to a term of imprisonment, because the application of these laws will depend on decisions made by prison and parole authorities.

You may consider the existence of the parole law and good conduct time. However, you are not to consider the extent to which good conduct time may be awarded to or forfeited by this particular defendant. You are not to consider the manner in which the parole law may be applied to this particular defendant.

The burden of proof in all criminal cases rests upon the State throughout the trial and never shifts to the defendant.

You are further instructed that in fixing the defendant's punishment, which you will show in your verdict, you may take into consideration all the facts shown by the evidence admitted before you in the full trial of this case and the law as submitted to you in this charge.

You are not to discuss among yourselves how long the accused would be required to serve the sentence that you impose. Such matters come within the exclusive jurisdiction of the Board of Pardons and Paroles division of the Texas Department of Criminal Justice and the Governor of the State of Texas, and must not be considered by you.

Your verdict must be by a unanimous vote of all members of the jury. In arriving at the amount of punishment to be assessed, it will not be proper for you to fix the same by lot, chance, any system of averages, or any other method than by a full, fair, and free exercise of the opinion of the individual jurors, and you must not refer to nor discuss any matter not in evidence before you.

You are the exclusive judges of the facts proved, of the credibility of the witnesses and of the weight to be given their testimony, but you are bound to receive the law from the court, which has been given you.

No one has any authority to communicate with you except the officer who has you in charge. During your deliberations in this case, you must not consider, discuss, nor relate any matters not in evidence before you. You should not consider nor mention any personal knowledge or information you may have about any fact or person connected with this case which is not shown by the evidence. After you have reached a unanimous verdict, the Foreman will certify thereto by using the appropriate form attached to this charge and signing the same as Foreman.

Following the arguments of counsel, you will retire to deliberate your verdict.

/s/_____
Brian E. Warren, Judge
209th District Court
Harris County, TEXAS

CAUSE NO. 1325037

IN THE 209TH DISTRICT COURT

OF HARRIS COUNTY, TEXAS

JANUARY TERM, A. D., 2019

THE STATE OF TEXAS

vs.

ANGEL LEE RANKIN

SPECIAL ISSUE

Do you the Jury find that the defendant proved by a preponderance of the evidence that the defendant, having committed the offense of murder, caused the death of Steven Willis under the immediate influence of sudden passion arising from an adequate cause?

The Jury will answer either, "We do" or "We do not."

ANSWER: We do not

/s/_____
Foreman of the Jury

* * *

"We, the Jury, having found the defendant, Angel Lee Rankin, guilty of murder, assess her punishment at confinement in the institutional division of the Texas Department of Criminal Justice for 15 years."

/s/_____
Foreman of the Jury

COURT OF CRIMINAL APPEALS OF TEXAS

COA No. 01-19-00156-CR
PD-0073-21
Tr. Ct. No. 1325037

[Filed February 24, 2021]

RANKIN, ANGEL LEE

On this day, the Appellant's petition for discretionary review has been refused.

Deana Williamson, Clerk

Statutory Provisions Involved Appendix

Tex. Penal Code § 9.31

> (a) Except as provided in Subsection (b), 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. The actor's belief that the force was immediately necessary as described by this subsection is presumed to be reasonable if the actor:
>
> (1) knew or had reason to believe that the person against whom the force was used:
>
> (A) unlawfully and with force entered, or was attempting to enter unlawfully and with force, the actor's occupied habitation, vehicle, or place of business or employment;
>
> (B) unlawfully and with force removed, or was attempting to remove unlawfully and with force, the actor from the actor's habitation, vehicle, or place of business or employment; or
>
> (C) was committing or attempting to commit aggravated kidnapping, murder, sexual assault, aggravated sexual assault, robbery, or aggravated robbery;

(2) did not provoke the person against whom the force was used; and

(3) was not otherwise engaged in criminal activity, other than a Class C misdemeanor that is a violation of a law or ordinance regulating traffic at the time the force was used.

(b) The use of force against another is not justified:

(1) in response to verbal provocation alone;

(2) to resist an arrest or search that the actor knows is being made by a peace officer, or by a person acting in a peace officer's presence and at his direction, even though the arrest or search is unlawful, unless the resistance is justified under Subsection (c);

(3) if the actor consented to the exact force used or attempted by the other;

(4) if the actor provoked the other's use or attempted use of unlawful force, unless:

(A) the actor abandons the encounter, or clearly communicates to the other his intent to do so reasonably believing he cannot safely abandon the encounter; and

(B) the other nevertheless continues or attempts to use unlawful force against the actor.

Tex. Penal Code § 9.32

(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; or

(B) to prevent the other's imminent commission of aggravated kidnapping, murder, sexual assault, aggravated sexual assault, robbery, or aggravated robbery.

(b) The actor's belief under Subsection (a)(2) that the deadly force was immediately necessary as described by that subdivision is presumed to be reasonable if the actor:

(1) knew or had reason to believe that the person against whom the deadly force was used:

(A) unlawfully and with force entered, or was attempting to enter unlawfully and with force, the actor's occupied habitation,

vehicle, or place of business or employment;

(B) unlawfully and with force removed, or was attempting to remove unlawfully and with force, the actor from the actor's habitation, vehicle, or place of business or employment; or

(C) was committing or attempting to commit an offense described by Subsection (a)(2)(B);

(2) did not provoke the person against whom the force was used; and

(3) was not otherwise engaged in criminal activity, other than a Class C misdemeanor that is a violation of a law or ordinance regulating traffic at the time the force was used.

(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.

(d) For purposes of Subsection (a)(2), in determining whether an actor described by Subsection (c) reasonably believed that the use of deadly force was necessary, a

finder of fact may not consider whether the actor failed to retreat.

Tex. Penal Code § 19.02

(a) In this section:

(1) "Adequate cause" means cause that would commonly produce a degree of anger, rage, resentment, or terror in a person of ordinary temper, sufficient to render the mind incapable of cool reflection.

(2) "Sudden passion" means passion directly caused by and arising out of provocation by the individual killed or another acting with the person killed which passion arises at the time of the offense and is not solely the result of former provocation.

(b) A person commits an offense if he:

(1) intentionally or knowingly causes the death of an individual;

(2) intends to cause serious bodily injury and commits an act clearly dangerous to human life that causes the death of an individual; or

(3) commits or attempts to commit a felony, other than manslaughter, and in the course of and in furtherance of the commission or attempt, or in immediate

flight from the commission or attempt, he commits or attempts to commit an act clearly dangerous to human life that causes the death of an individual.

(c) Except as provided by Subsection (d), an offense under this section is a felony of the first degree.

(d) At the punishment stage of a trial, the defendant may raise the issue as to whether he caused the death under the immediate influence of sudden passion arising from an adequate cause. If the defendant proves the issue in the affirmative by a preponderance of the evidence, the offense is a felony of the second degree.