Opinion filed March 23, 2017

In The

Eleventh Court of Appeals

No. 11-14-00317-CR

JACK WESLEY MELTON, Appellant
V.
THE STATE OF TEXAS, Appellee

On Appeal from the 50th District Court
Baylor County, Texas
Trial Court Cause No. 5580

M E M O R A N D U M O P I N I O N

The jury found Jack Wesley Melton guilty of the offense of capital murder of Florence Martin.[1] The trial court assessed punishment at confinement for life and then sentenced Appellant. On appeal, Appellant challenges the sufficiency of the evidence. We affirm.

I. *The Charged Offense*

The grand jury indicted Appellant for the offense of capital murder. In the indictment, the grand jury alleged that Appellant intentionally caused the death of

[1]*See* TEX. PENAL CODE ANN. § 19.03 (West Supp. 2016).

the victim when he shot her with a firearm, a deadly weapon, while in the course of committing or attempting to commit the offense of burglary, robbery, or aggravated sexual assault. Under Section 19.02(b)(1), a person commits the offense of murder if he "intentionally or knowingly causes the death of an individual." TEX. PENAL CODE ANN. § 19.02(b)(1) (West 2011). Under Section 19.03(a)(2) of the Penal Code, a person commits the offense of capital murder when he "commits murder as defined under Section 19.02(b)(1) and . . . intentionally commits the murder in the course of committing or attempting to commit kidnapping, burglary, robbery, [or] aggravated sexual assault." *Id.* § 19.03(a)(2). The State did not seek the death penalty in this case. The punishment for conviction of the offense of capital murder, where the State does not seek the death penalty, is automatic imprisonment for life without parole. *See* PENAL § 12.31; TEX. CODE CRIM. PROC. ANN. art. 37.071 (West Supp. 2016).

II. *Evidence at Trial*

A. The victim's relative and friend described her work schedule, daily routine, and personal habits.

Brenda Elliott, the victim's daughter, testified that her mother worked the night shift at the Allsup's convenience store in Seymour. Shirley Jones, a close friend of the victim, corroborated Elliott's testimony that the victim worked at Allsup's. Jones explained that the victim worked from 11:00 p.m. to 7:00 a.m. She also outlined the victim's daily routine, which was to leave work at 7:00 a.m., go home, "fiddle" around the house, and then go to bed. The victim would awake between 3:00 and 5:00 p.m., take a bath, put on her housecoat, and then lie down again briefly before she left for work at 10:30 p.m.

Both Jones and Elliott testified that the victim routinely carried at least a couple of hundred dollars in cash and routinely paid cash for things. The victim rarely used credit cards and did not go to bars. Elliott said that the victim liked to

read in bed, would not have left items on the floor or open on the table, and had weapons in the house. Elliott said that the victim would not have left lingerie items on the floor. Both women believed that the victim would not have willingly appeared nude in front of a man who was half her age.

B. On October 30, 1994, deputies found the victim at home—she had been murdered.

On October 30, 1994, Sheila Roberts, a great niece of the victim, called the victim at 6:13 p.m. The victim answered the phone but sounded groggy. Later in the evening, at 8:00 p.m., Jones called the victim, but the victim did not answer her phone. Around 11:00 p.m., Curtis Priddy, who was a Baylor County sheriff's deputy at the time, received a call about the victim not reporting for work. The victim was always punctual, so Deputy Priddy drove to her house to investigate. He arrived at her house at approximately 11:30 p.m., and he noticed that the victim's car was in the carport and that her dog was barking loudly, which was unusual. Deputy Priddy called Deputy Chuck Morris for assistance; Deputy Morris arrived at 11:53 p.m. The dog had calmed down, and both deputies approached the house and knocked on the front door. No one answered. Both deputies then walked around to the side of the house and peered through a window into the kitchen. The kitchen lights were on, and they entered the residence through the unlocked kitchen door.

Deputy Priddy discovered the victim, who was nude, lying across the bed. As the deputies approached her, they discovered a bullet hole in a pillow that rested on the top of her body. Without touching anything other than the kitchen door, they immediately called the sheriff. The sheriff called the district attorney's investigator. The victim had been shot in the back of the head. The deputies saw blood on the bed and the floor. The victim's clothes had been laid out as if she were preparing to go to work. The deputies also noticed a checkbook on the floor in the dining area, as well as a bra in the hallway. On the table, they saw her purse, lottery tickets, and

her open wallet. There were other items that looked like they had been "raked" off the dining table.

C. Law enforcement begin to investigate the victim's murder.

Sheriff Jerry Barton and Investigator Gillilan, both of whom are now deceased, arrived at the residence. Sheriff Barton photographed the crime scene. The deputies assisted Investigator Gillilan in collecting evidence, including a .22 caliber bullet and fragments under the victim's head and on the floor. The deputies also collected some lingerie items, a housecoat, the sheets and blankets from the bed, and the pillow with the bullet hole. The deputies also found a .22 shell casing on the porch and a box of .22 caliber ammunition on top of the microwave in the kitchen. Law enforcement found no money in the residence, and they could not tell if checks had been taken from the checkbook.

Deputy Priddy explained that, when they examined the residence, there did not appear to have been a struggle. John Michael Griffin, the Seymour police chief, explained that someone found one of the victim's credit cards on the side of the road near Seymour and that the person gave the credit card to Chief Griffin, who turned it over to the investigators. A short time later, the deputies expanded their search beyond the victim's residence. Down the road from the residence, they discovered two more of the victim's credit cards and also found some lottery tickets.

Karen Ross, a forensic pathologist, performed the autopsy on the victim. Ross explained that the body was nude but that a nightgown, a housecoat, a handkerchief, a mattress pad, sheets, a blanket, a comforter, and a pillow with a pillowcase were included with the victim's body in a sealed bag. She noted that the pillow had a bullet hole through it with soot around the edge of the bullet hole. She determined that the gun was in contact with the pillow when the shots were fired because of the soot completely around the bullet-hole defect in the pillow and pillowcase. She further testified that the victim had been shot in the head at least twice and described

the defects and abrasions in the victim's scalp and skull. Ross recovered two copper-gilded small caliber projectiles from the victim's brain. She explained that the injuries to the skull and brain were lethal wounds. She reported that she found no trauma to the victim's rectum or vagina but that sexual assault could occur without evidence of trauma or semen.

Anne Marie O'Dell, a prison guard and Appellant's former girlfriend, testified that she previously worked in road construction and knew Appellant from that work. She began dating Appellant in 1992 and later moved in with him and his mother. She described her relationship with Appellant as "rocky" because he rarely had money and often would get mad and leave for long periods of time—sometimes weeks. O'Dell said that Appellant had a .22 caliber, single-action revolver that he kept at his mother's house. She also said that he had told her about a pistol that he pawned in San Antonio in November 1994, which he received for towing a man's car.

Texas Ranger Joe Haralson testified that he located a pistol that had been stolen in Gillespie County on November 1, 1994, and pawned at a pawnshop in San Antonio three days later. Ranger Haralson met with Appellant, and Appellant admitted at that meeting that he had pawned the pistol. Appellant told Ranger Haralson that he left Paris, Texas, on November 1, 1994, drove to Daingerfield and stayed there for two days, and then drove to San Antonio to sightsee. Appellant also told Ranger Haralson that he paid cash for a motel room and that he helped a man in San Antonio fix a flat tire. He bought the pistol, a .40 caliber Ruger, from the man for $100. Appellant then spent the night in his vehicle at a lake and drove to Kemah the next day. On March 27, 1995, Appellant signed a statement that outlined his whereabouts two days after the victim's murder. Appellant was not arrested at this meeting and left after the interview.

Luke Griffin, an investigator for the 39th Judicial District and the former sheriff of Baylor County from 1996 through 2000, explained that the case remained unsolved initially because there was not enough evidence to make an arrest

D. Appellant tells others that he committed a crime of sexual assault.

Bill Mory, a licensed professional counselor, testified that Appellant told him about a crime that Appellant had committed in October or November of 1994. Appellant told Mory that he had been drinking and picked up a woman in a bar north of Fort Worth. Appellant said that they went to her house and engaged in sex. While they were having sex, the woman told Appellant to stop, but Appellant continued. Jennifer Rutherford testified that, in 2009, Appellant told her and Dianne Robinson about a crime that he had committed somewhere northwest of Fort Worth in 1994. She explained that Appellant had told them that, when he was thirty-three, he met an older woman in a bar and that they went to her house, where he forced her to have sex with him. He said that he never used a weapon during the assault and that he spent the night at the woman's house but left when the woman threatened to call the police. Appellant never admitted to Mory, Rutherford, or Robinson that he murdered the woman; he also never disclosed her name or where she lived.

E. Law enforcement continued their investigation.

Marshall Brown was a Texas Ranger who was called in to be a "new set of eyes" and to assist in the investigation of the victim's murder. Deputy Priddy assisted him. During the investigation, several people were interviewed about the case, both in Texas and Oklahoma. Another Texas Ranger, Tony Arnold, testified that, in 2001, the Texas legislature created an "unsolved crimes" task force and that he was assigned to assist with this case. Ranger Arnold thought that a sexual assault had occurred and reviewed the evidence in the case, and the DNA profile guided the renewed investigation. Ranger Brown explained that the DNA profile extracted

from the semen sample, which was taken from the pillow found on the victim's head, helped in the investigation.

In May 2011, Ranger Arnold learned from the DNA analyst in Lubbock that the semen stain on the pillowcase matched someone in the DNA database. The DNA testing pointed to Appellant as a suspect. Rutherford spoke to Ranger Arnold about Appellant. Rutherford agreed to talk to Appellant again and record the conversation. Appellant told her in 2012 that he had argued with his girlfriend, left the house, drank heavily, drove to northwest Texas, went to a bar, and met a woman there who asked him to come to her home. Rutherford explained that Appellant told her that he followed the woman to her house, where they engaged in both oral sex and vaginal intercourse. Appellant said that she wanted to stop, but he continued.

F. Law enforcement investigators completed DNA testing on the pillowcase.

Cathy McCord, the laboratory manager of the Texas Department of Public Safety crime laboratory in Lubbock, explained the DNA testing procedures and testified that the DNA sample from the semen stain on the pillowcase matched the DNA sample provided by Appellant. She explained how DNA testing had advanced from 1998 to 2012 and how Appellant's DNA matched the semen stain on the pillowcase—with the probability of such a match being one in 3.6 quintillion for Caucasians—and explained that the testing excluded other individuals.

G. Police questioned Appellant again, collected hair and blood samples, and later confronted Appellant with the DNA test results.

In 2012, Ranger Arnold met with Appellant, and after waiving his *Miranda* rights,[2] Appellant spoke to Ranger Arnold, who recorded the interview. Later that day, Ranger Arnold collected a blood sample, hair sample, and pubic hair sample from Appellant. Appellant linked his story about raping a woman to his drive south

[2]*Miranda v. Arizona*, 384 U.S. 436 (1966).

to San Antonio. He said that he stopped to sleep, then helped a man with a flat tire, received and pawned a gun, and then drove to Kemah. However, he described a different route than the one he had previously described. When shown photos of the victim and her house, Appellant denied that he knew the victim or that he had been at her house. After this interview was concluded, Appellant was not arrested, and he left.

Later, Ranger Arnold secured a copy of Appellant's birth certificate and determined that he did not have a twin. Ranger Arnold met Appellant once more, and after Ranger Arnold had given Appellant his *Miranda* warnings, Appellant waived those rights and spoke to Ranger Arnold. Ranger Arnold confronted Appellant about how his different route descriptions for his November 1994 trip to Kemah. He also confronted Appellant with the DNA evidence from the crime scene. Earlier, Appellant had denied any involvement in the victim's death, and when Ranger Arnold confronted Appellant with the evidence that his DNA matched the DNA profile from the semen stain on the pillowcase, Appellant did not respond.

III. *Standard of Review*

We review the sufficiency of the evidence to determine whether any rational jury could have found Appellant guilty beyond a reasonable doubt. *Jackson v. Virginia*, 443 U.S. 307, 319 (1979); *Brooks v. State*, 323 S.W.3d 893, 912 (Tex. Crim. App. 2010); *Hooper v. State*, 214 S.W.3d 9, 13 (Tex. Crim. App. 2007). Following that standard, we review all the evidence in the light most favorable to the verdict and decide whether any rational trier of fact could have found, based on the evidence or reasonable inferences from it, each element of the offense beyond a reasonable doubt. *Jackson*, 443 U.S. at 319; *Isassi v. State*, 330 S.W.3d 633, 638 (Tex. Crim. App. 2010). The trier of fact is the sole judge of the weight of the evidence and credibility of the witnesses and may believe any portion of a witness's testimony. *Dewberry v. State*, 4 S.W.3d 735, 740 (Tex. Crim. App. 1999); *Sharp v.*

State, 707 S.W.2d 611, 614 (Tex. Crim. App. 1986); *Isham v. State*, 258 S.W.3d 244, 248 (Tex. App.—Eastland 2008, pet. ref'd). We defer to the trier of fact's resolution of any conflicts in the evidence and presume that the trier of fact resolved such conflicts in favor of the verdict. *Jackson*, 443 U.S. at 326; *Brooks*, 323 S.W.3d at 894; *Clayton v. State*, 235 S.W.3d 772, 778 (Tex. Crim. App. 2007).

We must give deference to "the responsibility of the trier of fact fairly to resolve conflicts in the testimony, to weigh the evidence, and to draw reasonable inferences from basic facts to ultimate facts." *Jackson*, 443 U.S. at 319. When we review the sufficiency of the evidence, we should look at "events occurring before, during and after the commission of the offense and may rely on actions of the defendant which show an understanding and common design to do the prohibited act." *Hooper v. State*, 214 S.W.3d 9, 13 (Tex. Crim. App. 2007) (quoting *Cordova v. State*, 698 S.W.2d 107, 111 (Tex. Crim. App. 1985)). "Each fact need not point directly and independently to the guilt of the appellant, as long as the cumulative force of all the incriminating circumstances is sufficient to support the conviction." *Id.* (citing *Johnson v. State*, 871 S.W.2d 183, 186 (Tex. Crim. App. 1993)).

IV. *Analysis*

Appellant asserts that the State failed to adduce sufficient evidence for a rational jury to convict him beyond a reasonable doubt of the offense of capital murder. We disagree. The record reflects that the State adduced evidence about the victim's life, the discovery of her murder, and the subsequent investigation. The jury also heard about the different stories told by Appellant. In addition, the jury heard about forensic evidence as well as DNA evidence.

The DNA evidence found at the murder scene placed Appellant at the murder scene. McCord explained how DNA testing excluded fifteen people but yielded a match for Appellant. In addition, because Appellant had no twin, she explained that the DNA match from the pillowcase to Appellant was one in 3.6 quintillion for

Caucasians—only one person in the world with that DNA profile—the Appellant. When the jury deliberated on all of this evidence, the jury chose to believe Ross, McCord, Ranger Arnold, Ranger Haralson, Ranger Brown, Rutherford, and Mory, as well as the victim's friends and relatives.

Based upon our review of the entire record, we hold that a rational jury could have found beyond a reasonable doubt that Appellant committed the offense of capital murder. Accordingly, we overrule Appellant's sufficiency-of-the-evidence issue on appeal.

V. *This Court's Ruling*

We affirm the judgment of the trial court.

MIKE WILLSON
JUSTICE

March 23, 2017

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

Panel consists of: Wright, C.J.,
Willson, J., and Bailey, J.