

Affirm and Opinion Filed October 9, 2023



In The
Court of Appeals
Fifth District of Texas at Dallas

No. 05-22-00584-CR

BOBBY RAY HARRIS, Appellant
V.
THE STATE OF TEXAS, Appellee

On Appeal from the 282nd Judicial District Court
Dallas County, Texas
Trial Court Cause No. F-2076711-S

MEMORANDUM OPINION

Before Justices Molberg, Pedersen, III, and Nowell
Opinion by Justice Nowell

A jury convicted Bobby Ray Harris of murder, and he was sentenced to life imprisonment. In two issues, appellant argues the evidence is insufficient to support the conviction and the trial court violated his common law right to allocution. We affirm the trial court's judgment.

A. Sufficiency of the Evidence

Linda Simmons was appellant's girlfriend for approximately four years. In 2020, Simmons broke up with appellant and instructed him to move out of their shared apartment by October 7. In mid-to-late September, appellant told several

people he was going to kill Simmons; he told a coworker he would “kill the bitch” and told a neighbor he would “kill that B . . . she got me effed up.” Appellant also asked several people where he could buy a gun.

On October 6, appellant was distraught and sobbing at work. Several witnesses testified appellant informed his coworkers that he shot and killed Simmons and left her body in a nearby cemetery. Appellant made statements such as “[i]f I can’t have her, nobody can.” Because appellant’s coworkers did not believe he killed anyone, they drove to the cemetery. When they arrived, they encountered the police and then informed the police about appellant’s declarations. The police confirmed the presence of a body, which was Simmons’s body.

When reviewing the sufficiency of the evidence to support a conviction, we consider the evidence in the light most favorable to the verdict. *Edward v. State*, 635 S.W.3d 649, 655 (Tex. Crim. App. 2021). We uphold a verdict if any rational trier of fact could have found all the essential elements of the offense proven beyond a reasonable doubt. *Id.* “This familiar standard gives full play 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 v. Virginia*, 443 U.S. 307, 319 (1979). The finder of fact is the sole judge of the weight and credibility of the evidence. *Edward*, 635 S.W.3d at 655. When considering a claim of evidentiary insufficiency, we must keep in mind that the finder of fact may choose to believe or disbelieve all, some, or none of the evidence presented. *Id.* The

evidence is sufficient to support a conviction if “the inferences necessary to establish guilt are reasonable based upon the cumulative force of all the evidence when considered in the light most favorable to the verdict.” *Id.* at 655-56 (quoting *Wise v. State*, 364 S.W.3d 900, 903 (Tex. Crim. App. 2012)). When faced with conflicts in the evidence, a reviewing court shall presume that the fact finder resolved those conflicts in favor of the verdict and defer to that determination. *Id.*

The facts show appellant was unhappy that Simmons broke up with him and required him to move out of their shared apartment. He told several witnesses he was going to kill her, asked how to purchase a gun, and then admitted to shooting and killing her. Police found her body in the cemetery where he said it was. Based on the evidence in the record, any rational trier of fact could have found all the essential elements of the offense were proven beyond a reasonable doubt. We overrule appellant’s first issue.

B. Allocution

In his second issue, appellant argues the trial court violated his common law right of allocution. The State responds appellant failed to preserve his complaint for appellate review.

To complain on appeal about the denial of the right of allocution, the defendant must have timely objected. *Albiar v. State*, No. 05-22-00558-CR, 2023 WL 5814273, at *2 (Tex. App.—Dallas Sept. 8, 2023, no pet. h.) (mem. op., not designated for publication) (collecting cases). This Court has repeatedly held that a

defendant who fails to timely object to the denial of his right of allocution does not preserve the complaint for appeal. *Hicks v. State*, Nos. 05-20-00614-CR, 05-20-00615-CR, 2021 WL 3042672, at *1 (Tex. App.—Dallas July 19, 2021, no pet.) (mem. op., not designated for publication) (collecting cases).

Appellant did not raise any objection concerning a common law right of allocution during the sentencing proceeding. Although appellant raised his allocution complaint in his motion for new trial, “an appellant may raise a sentencing issue in a motion for new trial for the first time only if the appellant did not have the opportunity to object in the punishment hearing.” *Reyes v. State*, No. 05-21-00588-CR, 2022 WL 2338926, at *1 (Tex. App.—Dallas June 29, 2022, no pet.) (mem. op., not designated for publication) (quoting *McDonald v. State*, No. 05-20-00892-CR, 2021 WL 5917506, at *3 (Tex. App.—Dallas Dec. 15, 2021, no pet.) (mem. op., not designated for publication)). Appellant had the opportunity to raise his complaint during the sentencing proceeding, but did not do so. We conclude appellant did not preserve this argument for appeal. *See id.* We overrule his second issue.

C. Conclusion

We affirm the trial court’s judgment.

/Erin A. Nowell//
ERIN A. NOWELL
JUSTICE

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**Court of Appeals
Fifth District of Texas at Dallas**

JUDGMENT

BOBBY RAY HARRIS, Appellant

No. 05-22-00584-CR V.

THE STATE OF TEXAS, Appellee

On Appeal from the 282nd Judicial
District Court, Dallas County, Texas
Trial Court Cause No. F-2076711-S.
Opinion delivered by Justice Nowell.
Justices Molberg and Pedersen, III
participating.

Based on the Court's opinion of this date, the judgment of the trial court is
AFFIRMED.

Judgment entered this 9th day of October, 2023.