Opinion issued June 16, 2011

In The

Court of Appeals

For The

First District of Texas

NO. 01-10-00886-CR

CHRISTOPHER WILEY, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the 248th District Court
Harris County, Texas
Trial Court Case No. 1177903

MEMORANDUM OPINION

A jury found appellant, Christopher Wiley, guilty of the offense of capital murder,[1] and the trial court assessed his punishment at confinement for life. In his

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[1] *See* TEX. PENAL CODE ANN § 19.03 (Vernon Supp. 2010).

sole issue, appellant contends that the evidence is legally insufficient to support his conviction.

We affirm.

Background

Harris County Sheriff's Office ("HCSO") Deputy R. Gonzalez testified that at 10:00 p.m. on August 2, 2008, he was dispatched to the scene of a homicide in a trailer at the Burnaby Trails Trailer Park. Upon his arrival at the trailer, Gonzalez noted that its front doorframe was broken and items were scattered around the floor in the living room. To the right of the front door, Gonzalez found an unfired "live 12-gauge shotgun shell," and, along a wall, he noticed a "large amount of blood spatter," which, he opined, was possibly from "some type of blunt force impact" to a human body. The doorframe leading into the bathroom of the master bedroom was broken, consistent with the door having been "kicked open." There, Gonzalez saw additional blood droplets on the floor and two fired shotgun shells. At the entry to the kitchen, Gonzalez discovered the body of the complainant, Carl Bray, the landlord of the trailer park, with a gunshot wound to his head. In the bedroom, the drawers of a large wooden trunk had been pulled out and the contents "rummaged through."

Evangelo Diaz, who lived at the trailer park with his mother, testified that on August 2, 2008, he, Devontae Hatchett, Kristina Davis, and Tony Anders were in

Diaz's trailer watching television when appellant, his girlfriend "Piggy," Charles Battle, and another man, came to his trailer. Battle later walked out of the trailer and returned with a case, from which he removed a "pump shotgun," which he "pumped" several times. Battle, appellant, and the third man with them discussed robbing the complainant. Diaz noted that appellant "agree[d] with the plan to rob" the complainant. After Battle said, "We do this for a living," appellant suggested that they rob the complainant "when it got dark." Diaz and Hatchett left the trailer and went to the trailer of Genesis Mora. Diaz, while later standing outside, saw the three men who had been at his house earlier "run by." Battle was carrying the shotgun, and appellant, who said, "We'll catch you later," had a "small bag of knick knacks" in his hand. The three men exited through the "people gate" of the trailer park and left in a car that had been parked outside Diaz's trailer earlier.

Jamie Calvary testified that on August 2, 2008, she and the complainant were in his trailer when a "tapping on the window" of the front door awakened them. After the complainant looked through a window, he returned to bed. Later that evening, Calvary heard a "bang" when the door to the trailer was "kicked in." The complainant got out of the bed and told Calvary to "get down," and she "hid" on the side of the bed between the wall and the "pillow line." Calvary then heard the complainant "getting beat" and being "thrown into the walls." She then heard some "crashes," two gunshots, and some men say that they needed to find the

complainant's cash and the keys to his car. The men went through the complainant's wooden trunk and a jar on his nightstand containing jewelry. When Calvary heard the men leave, she grabbed her cellular telephone and called for emergency assistance. Calvary remained in the bedroom "curled up in a ball on [her] knees" until the sheriff's deputies arrived, and she learned that the complainant had been shot. Calvary and the deputies went through the bedroom and bathroom to determine what had been taken. A small wooden box containing approximately fifteen pieces of her jewelry, jewelry belonging to the complainant, a firearm kept in the wooden trunk, an "Armani watch," and a gold ring were missing.

Robin Freeman, an interpretation manager for the Harris County Institute of Forensic Sciences ("HCIFS"), testified that she conducted DNA testing on the crime scene samples gathered by the sheriff's deputies from the complainant's trailer. Freeman compared DNA samples taken at the trailer with reference samples taken from appellant, and she concluded that appellant was excluded as a possible contributor of the DNA on all the gathered samples.

HCIFS Assistant Medical Examiner Merill O. Hines testified that on August 3, 2008, she performed an autopsy on the body of the complainant. She noted that the complainant had a shotgun wound to the back of his head and lacerations, abrasions, and bruises on his face. She also noted several abrasions and contusions

on his body that were consistent with a struggle or fight. Hines opined that the cause of the complainant's death was a shotgun wound to the head.

Clifton Pittman, an inmate in the Harris County Jail, testified that he met appellant while they were in custody awaiting trial on their respective cases. In the Harris County Jail, appellant told Pittman that he had been involved in a robbery in which someone was killed in a trailer. Appellant first told Pittman that when he initially walked into the trailer, the man was already dead; however, approximately three weeks later, appellant stated that he had "walked in on a struggle" over a shotgun between the complainant and Battle. Appellant stated that he hit the complainant in the face, causing him to let go of the shotgun. When the complainant ran towards the kitchen, Battle fired three shots. Appellant also told Pittman that he took a watch, a jewelry box, and a "couple antique guns" from the complainant's trailer. He also explained that "Piggy" waited in a car outside the trailer park until the men came out. Appellant claimed that Kristina Davis and Evangelo Diaz's mother set up the robbery. Pittman further testified that he informed his lawyer that he had information concerning appellant's case, and he decided to testify about appellant's admissions because "if it was someone from [his] family, [he would] want someone to do the same thing" and it "might help" him "get a better deal" on his pending case.

HCSO Sergeant A. Beall, who had arrived to investigate the robbery and murder of the complainant, testified that he and other deputies searched the apartment of appellant's girlfriend. During the search, Beall found appellant's identification and a "pawn ticket" inside of a wallet. When Beall went to the pawn shop, he learned that the ticket was for a "men's Armani watch and a woman's ring" that appellant had pawned on August 3, 2008. During the course of his investigation, Beall had an opportunity to record a video tape of appellant's statement.

In his video-recorded statement, appellant explained that on August 2, 2008, he went to the trailer park with Battle, Jaquest Evans, and Piggy. Battle had a "black pump gun" with him, and appellant gave him a bag in which to put the shotgun. The group first went to the trailer of one of Piggy's friends, where they talked about robbing the complainant. Then, the group went to the complainant's trailer, and appellant, who knew that Battle had the shotgun with him, was present when Battle kicked in the front door. Once the men were inside the trailer, appellant heard Battle shoot the complainant. Appellant took a jewelry box and jewelry from the bathroom, and he went through the wooden chest. After taking the jewelry, appellant left with Piggy. Appellant noted that he had blood on his clothing, and he later threw away his clothes. Appellant also admitted to pawning a watch and ring that he had taken from the complainant's trailer.

Standard of Review

We review the legal sufficiency of the evidence by considering all of "the evidence in the light most favorable to the prosecution" to determine whether "any rational trier of fact could have found the essential elements of the offense beyond a reasonable doubt." *Jackson v. Virginia*, 443 U.S. 307, 318–19, 99 S. Ct. 2781, 2788–89 (1979). Evidence is legally insufficient when the "only proper verdict" is acquittal. *Tibbs v. Florida*, 457 U.S. 31, 41–42, 102 S. Ct. 2211, 2218 (1982). Our role is that of a due process safeguard, ensuring only the rationality of the trier of fact's finding of the essential elements of the offense beyond a reasonable doubt. *See Moreno v. State*, 755 S.W.2d 866, 867 (Tex. Crim. App. 1988). We give deference to the responsibility of the fact finder to fairly resolve conflicts in testimony, to weigh evidence, and to draw reasonable inferences from the facts. *Williams v. State*, 235 S.W.3d 742, 750 (Tex. Crim. App. 2007). However, our duty requires us to "ensure that the evidence presented actually supports a conclusion that the defendant committed" the criminal offense of which he is accused. *Id*.

Sufficiency of the Evidence

In his sole issue, appellant argues that the evidence is legally insufficient to support his conviction because there is no evidence that he is the actual person who

shot the complainant or is criminally responsible for the conduct of the person who shot the complainant.

A person commits the offense of capital murder if he intentionally or knowingly causes the death of an individual and does so in the course of committing or attempting to commit the offense of robbery. TEX. PENAL CODE ANN. § 19.02(b)(1) (Vernon 2003), § 19.03(a)(2) (Vernon Supp. 2010); *Sholars v. State*, 312 S.W.3d 694, 703 (Tex. App.—Houston [1st Dist.] 2009, pet. ref'd). A person commits the offense of robbery if, in the course of committing theft, and with the intent to obtain or maintain control of property, he intentionally or knowingly threatens or places another in fear of imminent bodily injury or death. TEX. PENAL CODE ANN. § 29.02(a)(2) (Vernon 2003).

Under the law of parties, a person is "criminally responsible" as a party to an offense if the offense was committed "by his own conduct, by the conduct of another for which he is criminally responsible, or by both." *Id.* § 7.01(a). Each party to an offense may be charged with commission of the offense. *Id.* § 7.01(b). A person is "criminally responsible" for an offense committed by the conduct of another if, acting with intent to promote or assist the commission of the offense, he solicits, encourages, directs, aids, or attempts to aid the other person to commit the offense. *Id.* § 7.02(a)(2). Under section 7.02(b), if, in the attempt to carry out a conspiracy to commit one felony, another felony is committed by one of the

conspirators, all conspirators are guilty of the felony actually committed, though having no intent to commit it, if the offense was committed in furtherance of the unlawful purpose and was one that should have been anticipated as a result of the carrying out of the conspiracy. *Id.* § 7.02(b). A person commits criminal conspiracy if, with intent that a felony be committed, he agrees with one or more persons that they or one or more of them engage in conduct that would constitute the offense. *Id.* § 15.02(a)(1). Thus, if the evidence is sufficient to support appellant's conviction as a party under either section 7.02(a)(2) or 7.02(b), we must uphold the conviction. *Swearingen v. State*, 101 S.W.3d 89, 95 (Tex. Crim. App. 2003).

To establish guilt under the law of parties, the evidence must show that, at the time of the offense, the parties were acting together, each contributing some part towards the execution of their common purpose. *See Ransom v. State*, 920 S.W.2d 288, 302 (Tex. Crim. App. 1994); *Ahrens v. State*, 43 S.W.3d 630, 633–34 (Tex. App.—Houston [1st Dist.] 2001, pet. ref'd). In determining whether a defendant participated in an offense as a party, the fact finder may examine the events occurring before, during, and after the commission of the offense and may rely on actions of the defendant that show an understanding and common design to commit the offense. *Ransom*, 920 S.W.2d at 302; *Ahrens*, 43 S.W.3d at 634. Each fact need not point directly and independently to the guilt of the defendant, as long

as the cumulative effect of all the incriminating facts are sufficient to support the conviction. *Guevara v State*, 152 S.W.3d 45, 49 (Tex. Crim. App. 2004); *see Alexander v. State*, 740 S.W.2d 749, 758 (Tex. Crim. App. 1987). Intent may also be inferred from circumstantial events, such as acts, words, and the conduct of the defendant. *Guevara,* 152 S.W.3d at 50; *Patrick v. State*, 906 S.W.2d 481, 487 (Tex. Crim. App. 1995). We note that proof beyond a reasonable doubt that appellant actually fired the fatal shots is not necessary to support a capital murder conviction when, as here, the jury was charged on the law of parties. *Rabbini v. State*, 847 S.W.2d 555, 558 (Tex. Crim. App. 1992).

In support of his sufficiency challenge, appellant asserts that it is clear that he was not the actual shooter of the complainant. He argues that his "vicarious liability" under section 7.02(a)(2) "extends no further than that which he specifically intended to promote or assist— an aggravated robbery" because there is no evidence he ever "solicited, encouraged, directed, aided, or attempted to aid [Battle] to commit the offense of capital murder during the course of the robbery." He further argues that under section 7.02(b), the evidence is insufficient to sustain his conviction because there is no evidence that he should have anticipated the murder of the complainant.

The evidence, when viewed in the light most favorable to the prosecution, supports appellant's conviction under the conspiracy theory of the law of parties.

The record shows that the men, while at Diaz's trailer, discussed their robbery of the complainant. Battle then went to his car and retrieved a shotgun. When back inside Diaz's trailer, Battle pumped the shotgun several times while the group continued discussing the robbery. After Battle stated, "We do this for a living," appellant suggested that they wait until after dark to rob the complainant. Appellant, as he admitted in his statement, then went with an armed Battle and another man to the complainant's trailer. After they entered the trailer, appellant, as he admitted to Pittman, hit the complainant in the face during a struggle over the shotgun. Appellant heard Battle shoot the complainant, and he later admitted that he had blood on his clothing. After hearing the gunshots, appellant took a jewelry box and several pieces of jewelry from inside the complainant's trailer. And he was seen running from the trailer carrying several items, some of which he later pawned. Thus, there is sufficient evidence to support the jury's implied finding that appellant and the two other assailants agreed to and, in fact, acted in concert to rob the complainant.

There is also sufficient evidence to support the jury's implied finding that appellant should have anticipated that someone could be killed as a result of carrying out the robbery. Appellant asserts that there is no evidence that he knew that Battle "had a propensity to shoot people during robberies." However, knowledge of a co-conspirator's violent propensity is not an element of the

offense, "so the lack of evidence of such knowledge is not dispositive of sufficiency." *See Hooper v. State*, 214 S.W.3d 9, 14 (Tex. Crim. App. 2007). The State, under section 7.02(b), was only required to prove that the complainant's murder should have been anticipated as a result of carrying out the conspiracy to commit robbery. *See* TEX. PENAL CODE ANN. § 7.02(b); *Barnes v. State*, 56 S.W.3d 221, 229 (Tex. App.—Fort Worth 2001, pet. ref'd). Here, appellant knew that Battle was armed with a shotgun. Robbery at gunpoint is sufficient, standing alone, to make the shooting an act that should have been anticipated, and, when an individual is shot, it must also be anticipated that the person may be injured or die as a result of the shots. *See Williams v. State*, 974 S.W.2d 324, 330 (Tex. App.—San Antonio 1998, pet. ref'd) (holding that killing during pawnshop robbery was foreseeable where at least one conspirator was present with firearm). Texas courts have consistently held that when a murder occurs in the course of a conspiracy to commit robbery, all parties to the robbery are guilty of murder. *See Green v. State*, 682 S.W.2d 271, 285–86 (Tex. Crim. App. 1984); *Longoria v. State*, 154 S.W.3d 747, 755 (Tex. App.—Houston [14th Dist.] 2004, pet. ref'd); *see also Ruis v. State*, 579 S.W.2d 206, 209 (Tex. Crim. App. 1979); *King v. State*, 502 S.W.2d 795, 797–98 (Tex. Crim. App. 1974). Courts have also consistently held that conspirators should anticipate that a murder could occur in the course of the commission of a robbery when they have knowledge that a co-conspirator is carrying a firearm. *See*

Love v. State, 199 S.W.3d 447, 453 (Tex. App.—Houston [1st Dist.] 2006, pet. ref'd); *Longoria*, 154 S.W.3d at 756–57. Appellant knew that Battle retrieved a shotgun when the men began discussing the robbery of the complainant, and he knew that Battle brought the shotgun to the robbery. Moreover, appellant admitted to Pittman that he struck the complainant in the head during a struggle over the shotgun.

Given this evidence, a reasonable trier of fact could have concluded that appellant should have anticipated a murder as a possible result of his agreement to rob the complainant. Accordingly, we hold that the evidence is legally sufficient to support appellant's conviction of the offense of capital murder.

We overrule appellant's sole issue.

Conclusion

We affirm the judgment of the trial court.

Terry Jennings
Justice

Panel consists of Justices Jennings, Bland, and Massengale.

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