Opinion issued March 8, 2012

In The

Court of Appeals

For The

First District of Texas

NO. 01-10-01043-CR

SKYLAR JAMES BELL, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the 228th District Court
Harris County, Texas
Trial Court Case No. 1174910

MEMORANDUM OPINION

A jury convicted appellant, Skylar James Bell, of the first degree felony offense of murder and assessed punishment at sixty years' confinement.[1] In two

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[1] *See* TEX. PENAL CODE ANN. § 19.02(b)(1), (2) (Vernon 2011).

issues, appellant contends that the State failed to present sufficient evidence that he (1) intentionally or knowingly caused the death of the complainant, DeMarcus Washington,or (2) intended to cause serious bodily injury to Washington and committed an act clearly dangerous to human life that caused Washington's death.

We affirm.

Background

Around 11:00 p.m. on July 14, 2008, Houston Police Department ("HPD") Officer L. Ross was assisting in an investigation of a robbery on W. Tidwell Road in northwest Houston. As he was waiting for a city wrecker to tow a stolen vehicle for evidence processing, he heard approximately three or four gunshots. Officer Ross, who was standing in a parking lot, first notified the police dispatchervia his handheld radio that gunshots had been fired, and he then pointed his patrol car's floodlight in the direction of the gunshots. He first aimed his floodlight in between two buildings of the Luxor Park apartment complex, which was located on the other side of Tidwell from the parking lot in which he was parked, and he then shined the floodlight between two different buildings of the complex. After he scanned the area, Officer Ross drove over to the apartment complex. Officer Ross discovered the body of the complainant, DeMarcus Washington, lying in a courtyard, and he then "secured the scene" and waited for backup.

On cross-examination, Officer Ross testified that, although he heard three or four gunshots, he did not see the "muzzle flashes" corresponding to these shots. He also testified that he shined his floodlight at the apartment complex because it "was dark in [the] area" and that he needed to use his flashlight while walking around the scene. Officer Ross also stated that, when he shined his floodlight, he did not see anyone moving around or running. He did not find any potential suspects or witnesses when he walked to the scene.

On redirect-examination, Officer Ross clarified that he shined his light into two different areas: he did not see any movement in the first area, which is where he later discovered Washington, but he did see a person in the second area, which was between two buildings to the left of the murder scene. He did not believe that he would have been able to see that person had he not used his floodlight to illuminate the area. Officer Ross could not determine any physical characteristics of this individual from where he was located.

HPD Crime Scene Unit Sergeant J. Cruser, who was responsible for taking pictures of the scene and gathering physical evidence, testified that officers found Washington lying face-down in the dirt of a courtyard. He testified that he recovered a fired bullet located "very near" to Washington's body. He stated that

Washington appeared to have been shot three times, twice in the back and once in the neck.[2]

Antoinette Dunn, who lived at the Luxor Park apartments at the time of the shooting, testified that she knew appellant through her sister and that she had seen him around the complex "quite a few times." On the night of the shooting, Dunn woke up around 10:00 p.m. and decided to go to the Metro Mart convenience store, located across Tidwell from the apartment complex. After she left the Metro Mart, she saw a police car and a city wrecker in the parking lot of the shopping center. Dunn was standing in the median of Tidwell when she first heard a gunshot.

Dunn testified that, when she looked over into the apartments after Officer Ross turned on his floodlight, she could see Washington and appellant running through a grassy area of the complex. She stated that appellant was chasing Washington, and she first saw Washington when he appeared in an alley between two buildings of the complex. Appellant was slightly more than one arm's length behind Washington. Dunn testified that Washington was "running fast" and that appellant "had a gun in his hand running after [Washington]." She stated that she had no problem identifying either Washington or appellant. Dunn was still

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[2] Dr. PramodGumpeni of the Harris County Medical Examiner's Office conducted Washington's autopsy and confirmed that he had sustained three gunshot wounds. Dr. Gumpeni testified that either of the two entrance wounds on Washington's back could have been fatal. He also testified that Washington had cuts and bruises on his face, and these injuries were consistent with either falling to the ground after being shot or having been in an earlier fight.

standing in the median on Tidwell when she "saw the fire from the gun," which corresponded with the second gunshot that she heard. She testified that she saw appellant shoot Washington in the back and that Washington did "a weird arch" when he was shot. Dunn also testified that nothing was blocking her view when she saw this occur and that appellant was still chasing Washington when Washington arched his back. Dunn then heard another gunshot, but she did not see the muzzle fire from this shot because Washington and appellant had started running through another alley between two buildings. She also saw two other males, approximately twenty-five feet behind Washington and appellant, running in the same direction. Dunn did not see where Washington fell to the ground, but she saw him stumble as he approached the alley. Dunn last saw appellant running through an alley to the back of a parking lot in the complex. She stated that she had no doubt in her mind that appellant shot Washington.

Dunn testified that she did not speak with the police at the scene for fear of being considered a "snitch" by her neighbors.Instead, she went to an HPDsubstation the next afternoon and "told them [she] had information on the murder that happened on the night before." Dunn specifically identified appellant as the shooter, and she also gave a positive identification of appellant when she viewed a photo-array. She stated that appellant's appearance had changed in between the time of the shooting and the time of his trial and that, at the time of the

shooting, he wore his hair in dreadlocks. She also testified that, even if she had never viewed the photo-array, she would have been able to give an in-court identification of appellant as the shooter because she recognized "the dark color around his eyes," his dreadlocks, and his distinctive walk.

Caleb Bledsoe, who was nine years old at the time of the murder and who also lived at the Luxor Park apartments, testified that he had frequently seen appellant around the apartment complex.He testified that, on the night of the shooting, he was playing outside in front of his apartment around 10:00 p.m. While he was outside, he saw Washington, whom he also recognized as someone he had seen around the complex, and appellant in the midst of a fist-fight. He did not see any weapons during this fight. This fight lasted approximately ten minutes before Washington and appellant walked to a nearby parking lot in the complex and started fighting again. Bledsoe saw Washington punch appellant hard in the face and then the fight broke up and appellant walked away.

Bledsoe returned to the stairs in front of his apartment, and he saw Washington standing by himself nearby for approximately five minutes. Appellant then reappeared, and, as hewalked over to Washington, Washington moved behind a building in the complex, which blocked him from Bledsoe's view. Bledsoe saw appellant with a gun, and he saw appellant shootin Washington's direction. He testified that he saw appellant shoot the gun and then run off. He could not see

Washington at this point, but he testified that "[i]t looked like [appellant] was trying to chase [Washington]." Bledsoe heard "a couple more shots," and a few minutes later, he walked over to a courtyard in the apartment complex and saw Washington lying on the ground. The last time Bledsoe saw appellant was after he fired the first shot at Washington.

Bledsoe later talked to officers at an HPDsubstation, and he told the officers that "Skylar shot [Washington]." Bledsoe positively identified appellant as the shooter in a photo-array. When asked why he identified appellant in the photo-array, Bledsoe responded, "[Because] he was the one who shot [Washington]."Bledsoe agreed with Dunn that appellant's appearance had changed by the time of trial and that he had dreadlocks at the time of the shooting.

Equivalent Powers, who has three prior felony convictions, also testified that he lived in the Luxor Park apartments at the time of the shooting and that he had seen appellant around the complex on many occasions before the shooting. He agreed with Dunn and Bledsoe that appellant's appearance had changed since the shooting and that appellant used to wear his hair in dreadlocks. He also stated that he knew Washington and that he had seen him on many occasions at the complex.

Powers testified that he walked across Tidwell to a barbecue truck near the Metro Mart after 10:00 p.m. on the night of the shooting. While he was standing in that parking lot, he heard "an altercation" at the apartments and walked back across

the street to investigate. He saw Washington and appellant fist fighting, but he did not see any weapons. He stated that he was not aware of why Washington and appellant stopped fighting, but after they did he walked back across Tidwell to the Metro Mart parking lot. A few minutes later, Powers heard gunshots come from between two buildings in the apartment complex. Powers saw Washington running in between buildings. He acknowledged that the lighting was poor, but he identified Washington by his build and the way that he ran. He then saw appellant running a few feet behind Washington. He did not see appellant holding a weapon. Powers later positively identified appellant's picture in a photo-array.

The written jury charge, which tracked the language of the indictment, instructed the jury to convict appellant of murder if it found beyond a reasonable doubt that appellant either "unlawfully, intentionally or knowingly cause[d] the death of Demarcus Washington, by shooting Demarcus Washington with a deadly weapon, namely, a firearm" or "unlawfully intend[ed] to cause serious bodily injury to Demarcus Washington, and did cause the death of Demarcus Washington by intentionally or knowingly committing an act clearly dangerous to human life, namely by shooting Demarcus Washington with a deadly weapon, namely, a firearm." The jury found appellant "guilty of murder, as charged in the indictment" and assessed punishment at sixty years' confinement. This appeal followed.

Sufficiency of the Evidence

On appeal, appellant contends that the State failed to present sufficient evidence that he (1) intentionally and knowingly caused Washington's death or (2) intended to cause serious bodily injury to Washington and committed an act clearly dangerous to human life that caused Washington's death.

A. Standard of Review

When reviewing the sufficiency of the evidence, we view the evidence in the light most favorable to the verdict to determine whether any rational fact finder could have found the essential elements of the offense beyond a reasonable doubt. *Jackson v. Virginia*, 443 U.S. 307, 319, 99 S. Ct. 2781, 2789 (1979); *Brooks v. State*, 323 S.W.3d 893, 912 (Tex. Crim. App. 2010) (holding that *Jackson* standard is only standard to use when determining sufficiency of evidence). The jurors are the exclusive judges of the facts, the credibility of the witnesses, and the weight to be given to the testimony. *Brooks*, 323 S.W.3d at 899; *Bartlett v. State*, 270 S.W.3d 147, 150 (Tex. Crim. App. 2008). A jury may accept one version of the facts and reject another, and it may reject any part of a witness's testimony. *See Margraves v. State*, 34 S.W.3d 912, 919 (Tex. Crim. App. 2000), *overruled on other grounds*, *Laster v. State*, 275 S.W.3d 512 (Tex. Crim. App. 2009); *see also Henderson v. State*, 29 S.W.3d 616, 623 (Tex. App.—Houston [1st Dist.] 2000, pet. ref'd) (stating jury can choose to disbelieve witness even when witness's

testimony is uncontradicted). We may not re-evaluate the weight and credibility of the evidence or substitute our judgment for that of the fact finder. *Williams v. State*, 235 S.W.3d 742, 750 (Tex. Crim. App. 2007). We afford almost complete deference to the jury's determinations of credibility. *See Lancon v. State*, 253 S.W.3d 699, 705 (Tex. Crim. App. 2008). We resolve any inconsistencies in the evidence in favor of the verdict. *Curry v. State*, 30 S.W.3d 394, 406 (Tex. Crim. App. 2000); *see also Clayton v. State*, 235 S.W.3d 772, 778 (Tex. Crim. App. 2007) ("When the record supports conflicting inferences, we presume that the factfinder resolved the conflicts in favor of the prosecution and therefore defer to that determination.").

B. Penal Code 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) (Vernon 2011). A person acts intentionally, or with intent, with respect to the nature of his conduct or to a result of his conduct when it is his conscious objective or desire to engage in the conduct or cause the result. *Id.* § 6.03(a) (Vernon 2011). A person acts knowingly, or with knowledge, with respect to the nature of his conduct or to circumstances surrounding his conduct when he is aware of the nature of his conduct or that the circumstances exist. *Id.* § 6.03(b). A person acts knowingly, or with knowledge, with respect to a result of his conduct when he is aware that his

conduct is reasonably certain to cause the result. *Id.* "Intent is almost always proven by circumstantial evidence." *Trevino v. State*, 228 S.W.3d 729, 736 (Tex. App.—Corpus Christi 2006, pet. ref'd); *see also Hart v. State*, 89 S.W.3d 61, 64 (Tex. Crim. App. 2002) ("Direct evidence of the requisite intent is not required . . . ."). "A jury may infer intent from any facts which tend to prove its existence, including the acts, words, and conduct of the accused, and the method of committing the crime and from the nature of wounds inflicted on the victims." *Hart*, 89 S.W.3d at 64.

The intent to kill the complainant may be inferred from the use of a deadly weapon in a deadly manner. *Adanandus v. State*, 866 S.W.2d 210, 215 (Tex. Crim. App. 1993); *Watkins v. State*, 333 S.W.3d 771, 781 (Tex. App.—Waco 2010, pet. ref'd); *see also Sholars v. State*, 312 S.W.3d 694, 703 (Tex. App.—Houston [1st Dist.] 2009, pet. ref'd) ("[I]ntent to kill may be inferred from the use of a deadly weapon, unless it would not be reasonable to infer that death or serious bodily injury could result from the use of the weapon."). If the defendant uses a deadly weapon in a deadly manner, the inference of intent to kill is almost conclusive. *Watkins*, 333 S.W.3d at 781; *Trevino*, 228 S.W.3d at 736. When a deadly weapon is fired at close range and death results, the law presumes an intent to kill. *Womble v. State*, 618 S.W.2d 59, 64 (Tex. Crim. App. 1981);*Watkins*, 333 S.W.3d at 781; *see also Draper v. State*, 335 S.W.3d 412, 415 (Tex. App.—Houston [14th Dist.]

2011, pet. ref'd) ("Testimony at trial showed that appellant used a deadly weapon—a firearm—at close range to shoot and kill the victim. The jury was entitled to infer appellant's intent from this evidence."); *Sholars*, 312 S.W.3d at 704 ("The jury was free to infer that appellant intended to kill either Boutte or the complainant when he pointed the gun at Boutte and fired the shots into the gaming room."). A deadly weapon is "a firearm or anything manifestly designed, made, or adapted for the purpose of inflicting death or serious bodily injury, or anything that in the manner of its use or intended use is capable of causing death or serious bodily injury." TEX. PENAL CODE ANN. § 1.07(a)(17) (Vernon 2011); *Sholars*, 312 S.W.3d at 703.

Here, Antoinette Dunn testified that she heard a gunshot while she was walking across Tidwell to the Luxor Park apartment complex, and she saw appellant chasing Washington in between the buildings of the complex. She stated that she could clearly see both Washington and appellant; that Washington was running away quickly; that appellant was slightly more than one arm's length behind Washington; and that Washington was not holding a weapon. She also testified that she saw appellant shoot Washington in the back and that Washington did "a weird arch" that corresponded with the second gunshot and a muzzle flash. She saw Washington stumble as he reached another alley, and she last saw

appellant running away from the scene toward another parking lot in the complex. She stated that she had no doubt in her mind that appellant shot Washington.

Caleb Bledsoe testified that he saw Washington and appellant fist-fighting in the apartment complex. Washington and appellant momentarily paused in their fight, walked to a different part of the complex, and started fighting again. Eventually, after Washington punched appellant very hard in the face, the fight broke up, Washington returned to the area near Bledsoe's apartment, and appellant walked away. Bledsoe then saw appellant return with a gun, and, although he could not see Washington because Washington had moved behind a building, he saw appellant shoot the gun in Washington's direction. He then saw appellant run away, presumably chasing Washington, and he heard several more gunshots. Bledsoe subsequently walked over to a courtyard in the apartment complex and saw Washington lying on the ground with three gunshot wounds.

Although Powers testified that he never saw a weapon and he never saw any gunshots, he agreed with Bledsoe that Washington and appellant were involved in a fight on the evening of the shooting, and he agreed with Dunn that he saw appellant chasing Washington after he heard gunshots. Powers, Bledsoe, and Dunn all identified appellant's picture in a photo-array, and Bledsoe and Dunn specifically told police officers that appellant was the one who shot Washington.

Testimony at trial thus demonstrated that appellant used a deadly weapon—a firearm—at close range and that Washington died as a result. The jury was therefore entitled to infer from this evidence that appellant intended to cause Washington's death. *See Draper*, 335 S.W.3d at 415 ("Testimony at trial showed that appellant used a deadly weapon—a firearm—at close range to shoot and kill the victim. The jury was entitled to infer appellant's intent from this evidence."); *Sholars*, 312 S.W.3d at 704 ("The jury was free to infer that appellant intended to kill either Boutte or the complainant when he pointed the gun at Boutte and fired the shots into the gaming room."); *Trevino*, 228 S.W.3d at 737–38 ("From the evidence, the jury could reasonably infer that by opening fire with a semi-automatic weapon on an occupied vehicle, Trevino specifically intended to kill either or both of the occupants of the vehicle . . . ."); *see also Adanandus*, 866 S.W.2d at 215 ("Further, '[i]f a deadly weapon is used in a deadly manner, the inference is almost conclusive that [the defendant] intended to kill . . . .'"); *Womble*, 618 S.W.2d at 64 ("[W]here a deadly weapon is fired at close range and death results the law presumes an intent to kill.").

Any inconsistencies in the witness's testimony "concern the credibility and weight to be given certain testimony." *Draper*, 335 S.W.3d at 415. The jury is the exclusive judge of the credibility of witnesses and the weight to give their testimony. *Id.*; *see also Lancon*, 253 S.W.3d at 705 (stating that we afford almost

complete deference to jury's determinations of credibility); *Williams*, 235 S.W.3d at 750 (declaring that we may not re-evaluate weight and credibility of evidence or substitute our judgment for that of fact finder). Moreover, we resolve inconsistencies in the evidence in favor of the jury's verdict. *Clayton*, 235 S.W.3d at 778; *Curry*, 30 S.W.3d at 406. We therefore conclude that a rational fact finder could have found beyond a reasonable doubt that the State presented sufficient evidence that appellant intentionally or knowingly caused Washington's death.

We overrule appellant's first issue.[3]

[3] Because we hold that the State presented sufficient evidence that appellant intentionally caused Washington's death, we need not address his second issue—whether the State presented sufficient evidence that appellant intended to cause serious bodily injury to Washington and committed an act clearly dangerous to human life that caused Washington's death. The State charged appellant under Penal Code section 19.02(b)(1) and section 19.02(b)(2), and the jury found appellant guilty of murder "as charged in the indictment." "[W]hen a general verdict is returned and the evidence is sufficient to support a finding under any of the paragraphs submitted, the verdict will be applied to the paragraph finding support in the facts." *Amis v. State*, 87 S.W.3d 582, 587 (Tex. App.—San Antonio 2002, pet. ref'd) (quoting *Manrique v. State*, 994 S.W.2d 640, 642 (Tex. Crim. App. 1999)).

Conclusion

We affirm the judgment of the trial court.

Evelyn V. Keyes
Justice

Panel consists of Justices Keyes, Bland, and Sharp.

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