Opinion issued August 17, 2017

In The

Court of Appeals

For The

First District of Texas

NO. 01-16-00336-CR

LOUIS R. CLEMONS, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the 351st District Court
Harris County, Texas
Trial Court Case No. 1396258

MEMORANDUM OPINION

Appellant, Louis Clemons, was convicted of aggravated robbery and sentenced to 99 years' confinement. He appeals here, challenging the evidence of his intent to commit theft and the fingerprint evidence linking him to a cell phone recovered at the scene. We affirm.

BACKGROUND

The complainant, S. Karediy, testified that, in 2012, he worked at a game room named Triple 7, located in a strip center on Veterans Memorial Drive. He described Triple 7 as a place customers could play 8-liners, i.e., "like the slot machines you would see in a casino." Karediy's job was to maintain the gaming machines. He would check on them in the morning, and then he was on call for whenever there was a problem with a machine. The game room had a total of four employees who worked different shifts.

The game room is operated as a cash business. Customers use cash in the machines. That money is then collected periodically and stored in the office.

A. The Attempted Robbery

On April 18, 2012, Karediy went to work at 6:00 or 7:00 in the evening, and stayed until well after midnight. I. Miranda, the security guard, was the only other employee there that night. Usually the game room closes sometime between 1:00 a.m. and 3:00 a.m., depending on whether customers are there.

On April 18, 2012, the game room closed between 1:00 and 2:00 a.m. After Karediy walked out to the parking lot, he opened the driver's door of his car and then stood leaning on the car while talking to Miranda, who was standing in the doorway of the game room.

Karediy testified that someone suddenly came around from the side of the building, confronted him and Miranda with a handgun, and ordered them to "get down." Karediy instead jumped through his open car door, and locked the doors. Karediy testified that the gun was pointed at him, and he was terrified that the man might shoot him. While the man ran around Karediy's car trying to open all the locked doors, Miranda was able to run back inside the game room and lock the door.

When the man was on the passenger side of Karediy's car, he still had the gun pointed at Karediy. Karediy put the car in reverse and the man started shooting at him as he was backing up. Bullets shattered Karediy's windows, and his car was riddled with bullet holes. Karediy was not hit, but he was injured by glass shards that penetrated his arm and stomach area.

When asked to describe his attacker, Karediy testified that he was wearing a jacket, a cap, sunglasses, and a bandana over his face. Karediy was unable to get a look at his facial features. Karediy did identify him as African American because of the color of his hand holding the gun. Karediy described himself as 5'7" and weighing about 135 or 140 pounds. He testified that the man was "a little bigger than me." He does not remember if he described the perpetrator's skin color as dark or light when describing him to the police. He did not recall anything about tattoos on the man's hands.

Karediy raced out of the parking lot and drove to a nearby Shell gas station while calling the police. An officer called him back and asked him to return to the game room, where a police car and an ambulance were waiting. At trial, Karediy identified pictures of items the police found in the parking lot as items that he saw when he returned. These included bullet casings, a hat, sunglasses, a knife, and a cell phone. Karediy testified that he had not seen these items in the parking lot when he left the game room before the man with the gun appeared.

Miranda testified that he works for a security company that contracts with businesses like Triple 7. He was assigned there on April 18, 2012, with duties that included working the door to check customers' identification and walking customers to their car if they wanted an escort after dark.

Sometime after midnight, he was walking Karediy and the last customer outside. He testified, "When I opened the door, I was halfway out and halfway in. Mr. [Karediy] was getting into his vehicle, halfway in, halfway out, when around the corner, a person came out from nowhere with a gun." The perpetrator pointed the gun at Miranda and ordered him to drop to the floor. Instead, Miranda ran back inside and locked the door, hoping that, with the distraction, Karediy would have a chance to get in his car and take off.

Miranda described the person as wearing a black hat, black shades, and a black bandanna, and holding a handgun. He identified him as a black male based on

catching a glimpse of his hand that was holding the pistol. He did not notice if the perpetrator was light-skinned or dark-skinned, and he did not notice tattoos on his hands. Miranda also testified that he did not get a good look at the man's build or size, but opined that he was "probably my height," which he testified was 5'9".

Miranda went to the back room to call dispatch to report what was going on while he watched the video feed of the parking lot. He saw the perpetrator walking around Karediy's car, with his gun pointed at Karediy, trying to open the car doors and ordering Karediy to unlock the doors. Miranda then left the monitor to look for the exact address of the game room for the police. He heard gunshots. When he returned to the monitor, Miranda saw the perpetrator trying to pick up several items on the ground. These included a black cap, shades, a bandana, and gun. After he picked up the gun, the perpetrator walked to a gray Chrysler and got into the passenger side. He was no longer wearing his hat and glasses, but Miranda did not see his face, and he could not see the license number of the car.

Miranda stayed watching the video monitor until a sheriff's deputy arrived. He saw that the items that the perpetrator left behind on the ground remained undisturbed while he waited.

Karediy testified that he believed the perpetrator's motive for the attack was robbery. He had not gotten into an argument with anyone and assumed that this

person was after his possessions. Miranda likewise testified that he believed it was an attempted robbery.

Neither Kerediy nor Miranda recognized appellant at trial.

B. The Investigation

Deputy F. Montes with the Harris County Sheriff's Department testified to responding to a call about 2:30 a.m. on April 18, 2012 at Triple 7. Montes first took Miranda's statement about what happened, and then called Karediy to come back to the game room to also give a statement.

Montes then took pictures of items found in the parking lot, including a hat, lighter, sunglasses, a knife, and a cell phone. Karediy told Montes that the hat and sunglasses looked like what the perpetrator was wearing. Montes also found seven spent shell casings, and he examined Karediy's vehicle's bullet holes, broken windows, and splatters of blood from Karediy's injuries.

Montes testified that the witnesses described the perpetrator as a black male wearing a black mask, hat, and sunglasses. He could not recall the descriptions the witnesses gave of the perpetrator, but his incident report reflected that the suspect was between 5'9" and 5'11" and between 140 and 150 pounds. The report did not make any mention of identifying characteristics, such as tattoos, but it described the suspect's skin tone as "dark brown."

Montes collected the evidence and submitted it for fingerprint and DNA testing.

Deputy R. Glover, a crime scene investigator with the Sheriff's Department, described the process of comparing fingerprints for identification purposes. He compared appellant's fingerprints with those on the cell phone recovered from the game room parking lot and concluded that they matched. Glover testified that R. Reed, a certified fingerprint examiner with the Sheriff's Department, confirmed Glover's work, coming to the same conclusion, i.e., that the fingerprints from the cell phone belonged to appellant. There were no other prints on the phone.

Glover was not able to recover any usable latent prints from the shell casings recovered at the scene.

J. Turner, with the Harris County Institute of Forensic Sciences, firearms laboratory, testified that she compared the bullets recovered from Karediy's car and the shell casings found in the Triple 7 parking lot. Her testing confirmed that the bullets and casings had been fired from the same firearm. The specific firearm could not be identified.

Deputy C. Helstrom, another crime scene investigator with the Harris County Sheriff's Office, testified that she took a DNA sample from appellant. C. Smejkal, a DNA analyst at the Harris County Institute of Forensic Sciences, testified that she examined several items of evidence in this case for DNA. She found male DNA

only on the sunglasses and black hat that were recovered from the parking lot. She compared that DNA with the appellant's known DNA profile developed from the sample taken from appellant.

Helstrom testified that appellant could not be excluded as the contributor to the DNA on the sunglasses. She further testified to the possibility that a random person could be included as a contributor as "1 in 4.374 billion for African-Americans; for Caucasians, it's 1 in 97.4 million; and for Hispanics, it's 58.4 million." When tested, the glasses contained only a single source of DNA.

Appellant also could not be excluded as a contributor to the DNA from the black hat. Helstrom explained, however, that a more complete sample of DNA was recovered from the hat than the sunglasses. Accordingly, "the probability that a random -- random unrelated individual could be included would be 1 in 491.5 quintillion for African-Americans; for Caucasians, it's 1 in 4.779 sextillion; and for Hispanics, it's 1 in 4.580 sextillion." The hat contained DNA from three individuals, one major contributor and two minor contributors. The major contributor was the one consistent with appellant's DNA.

C. Appellant's Case

Appellant's wife, Mattie, testified that—in April 2012—she and appellant lived down the street from the Triple 7 game room. She and appellant had patronized the game room, as well as other businesses in the same shopping center.

She testified that appellant is 5'6" or 5'7" tall and a light brown African American who has tattoos on both hands that include dice. She further testified that he had those tattoos long before April of 2012, and the prominent dice tattoos on both hands were the source of his nickname, "Dice."

When asked about the April 18, 2012 robbery, she testified that they had heard about the robbery, but that she had no first-hand knowledge of it.

D. The Verdict and Judgment

The jury found appellant guilty of aggravated robbery. At the sentencing hearing, appellant pleaded true to prior felony enhancement convictions for aggravated robbery and possession of a controlled substance. Appellant also stipulated to additional prior convictions of felon in possession of a weapon, misdemeanor theft, felony possession of a controlled substance, and misdemeanor attempted burglary of a vehicle.

Several officers testified at appellant's punishment hearing about the day they went to locate appellant for questioning about the underlying offense. One plain-clothed officer observed what appeared to be appellant engage in a drug transaction. He radioed uniformed officers, who attempted to pull over the car appellant was driving. Appellant took them on a high-speed chase, eventually flipping the car he was driving multiple times, injuring his passenger. Appellant took off running, but was apprehended after a scuffle. A search in and around the vehicle appellant was

driving revealed a bag of cash and a bag containing marihuana and different narcotics, including ecstasy, crack cocaine, and powder cocaine. There was also a security guard's jacket, a security guard's lanyard with a badge, and a bag containing gloves, a knife, rope, duct tape, ski masks, and bandannas. After the vehicle was flipped back over, a bullet was also recovered.

Finally, appellant was identified as a Five Deuce Hoover Gangster Crip gang member. Police recovered from his girlfriend's apartment and the apartment next door numerous firearms, ammunition, prescriptions in appellant's name, as well as full doctor prescription pads. Appellant's girlfriend was observed by undercover officers moving some of these items from her apartment to the apartment next door after appellant started taking other officers on his high-speed chase.

At the close of the punishment phase, the jury assessed punishment at 99 years' confinement. Appellant appealed.

ISSUES ON APPEAL

Appellant brings the following two issues on appeal:

I. "In this aggravated robbery trial, the state failed to prove beyond a reasonable doubt that Louis R. Clemons threatened or shot anyone 'in the course of committing theft.'"

II. "The trial court reversibly erred by admitting unreliable fingerprint evidence."

AGGRAVATED ROBBERY

A person commits the offense of robbery "if, in the course of committing theft . . . and with intent to obtain or maintain control of the property," he "intentionally, knowingly, or recklessly causes bodily injury to another" or "intentionally or knowingly threatens or places another in fear of imminent bodily injury or death." TEX. PENAL CODE ANN. § 29.02(a)(1)&(2) (West 2011). A person commits the offense of aggravated robbery if he commits robbery and "uses or exhibits a deadly weapon." *Id*. § 29.03(a)(2) (West 2011). A firearm is a deadly weapon. *Id*. § 1.07(a)(17)(A) (West 2011). "'In the course of committing theft' means conduct that occurs in an attempt to commit, during the commission, or in immediate flight after the attempt or commission of theft." *Id*. § 29.01(1) (West 2011). Theft is the unlawful appropriation of property with intent to deprive the owner of the property. *Id*. § 31.03(a) (West 2011).

Appellant challenges only the sufficiency of the evidence that he was acting "in the course of committing theft." *See* TEX. PENAL CODE ANN. § 29.02–.03 (West 2011). Appellant contends that, because the State focused on proving appellant's *identity* at trial, the "evidence that [appellant] was even attempting to unlawfully appropriate the property of another with the intent to deprive such other person of that property was almost non-existent." Accordingly, he argues, there is insufficient evidence of each required element of aggravated robbery.

A. Standard of Review

We review challenges to the sufficiency of the evidence under the standard enunciated in *Jackson v. Virginia*, 443 U.S. 307, 318–20, 99 S. Ct. 2781, 2788–89, (1979). *See Ervin v. State*, 331 S.W.3d 49, 52–56 (Tex. App.—Houston [1st Dist.] 2010, pet. ref'd) (citing *Brooks v. State*, 323 S.W.3d 893, 894–913 (Tex. Crim. App. 2010)). Under the *Jackson* standard, evidence is insufficient to support a conviction if, considering all the record evidence in the light most favorable to the verdict, no rational factfinder could have found that each essential element of the charged offense was proven beyond a reasonable doubt. *See Jackson*, 443 U.S. at 317–19, 99 S. Ct. at 2788–89; *Laster v. State*, 275 S.W.3d 512, 517 (Tex. Crim. App. 2009). We consider both direct and circumstantial evidence and all reasonable inferences that may be drawn from the evidence in making our determination. *Clayton v. State*, 235 S.W.3d 772, 778 (Tex. Crim. App. 2007).

Evidence is insufficient under four circumstances: (1) the record contains no evidence probative of an element of the offense; (2) the record contains a mere "modicum" of evidence probative of an element of the offense; (3) the evidence conclusively establishes a reasonable doubt; or (4) the acts alleged do not constitute the criminal offense charged. *See Jackson*, 443 U.S. at 314, 318 & n.11, 320, 99 S. Ct. at 2786, 2789 & n.11; *Laster*, 275 S.W.3d at 518; *Williams v. State*, 235 S.W.3d 742, 750 (Tex. Crim. App. 2007).

The *Jackson* standard defers to the factfinder to resolve any conflicts in the testimony, to weigh the evidence, and to draw reasonable inferences from "basic facts to ultimate facts." *Jackson*, 443 U.S. at 318–19, 99 S. Ct. at 2788–89; *Clayton*, 235 S.W.3d at 778. Circumstantial evidence alone can be sufficient to establish guilt. *Hooper v. State*, 214 S.W.3d 9, 14–15 (Tex. Crim. App. 2007); *Cantu v. State*, 395 S.W.3d 202, 207 (Tex. App.—Houston [1st Dist.] 2012, pet. ref'd). And the State need not disprove all reasonable alternative hypotheses that are inconsistent with the defendant's guilt. *Wise v. State*, 364 S.W.3d 900, 903 (Tex. Crim. App. 2012); *Cantu*, 395 S.W.3d at 207. An appellate court presumes the factfinder resolved any conflicts in the evidence in favor of the verdict and defers to that resolution, provided that the resolution is rational. *See Jackson*, 443 U.S. at 326, 99 S. Ct. at 2793. If an appellate court finds the evidence insufficient under this standard, it must reverse the judgment and enter a judgment of acquittal. *See Tibbs v. Florida*, 457 U.S. 31, 41, 102 S. Ct. 2211, 2218 (1982).

B. Analysis

Appellant concedes that there "was evidence that the gunman exhibited a weapon and that placed [the complainant] Mr. Karediy in fear of bodily injury or death." In his first point of error, Appellant contends that there was not, however, evidence that "the gunman intended to deprive Mr. Karediy of his property" as alleged in the indictment. Appellant asserts that (1) Karediy's mere speculation that

appellant intended to rob him is insufficient, and (2) Miranda's testimony to his belief that he would "probably get robbed" is irrelevant because "Miranda is not the victim listed in the indictment," and "Miranda did not testify that the gunman intended to rob Mr. Karediy."

While there is no direct evidence of appellant's intent to commit theft, evidence can be sufficient for a conviction even if it is entirely circumstantial. *King v. State*, 29 S.W.3d 556, 565 (Tex. Crim. App. 2000). The standard of review for circumstantial and direct evidence is the same. *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." *Manrique v. State*, 994 S.W.2d 640, 649 (Tex. Crim. App. 1999) (Meyers, J., concurring).

Further, no completed theft is required for the proscribed conduct to constitute the offense of robbery. *Wolfe v. State*, 917 S.W.2d 270, 275 (Tex. Crim. App. 1996); *White v. State*, 671 S.W.2d 40, 41 (Tex. Crim. App. 1984). "Nor is it necessary that the victim of the theft or attempted theft and the victim of the robbery be the same."

White, 671 S.W.2d at 41–42 (citing *Servance v. State*, 537 S.W.2d 753 (Tex. Crim. App. 1976); *Lightner v. State*, 535 S.W.2d 176 (Tex. Crim. App. 1976)).

In light of these principles, we conclude that a rational trier of fact could have found beyond a reasonable doubt that appellant was acting "in the course of committing theft." *Jackson*, 443 U.S. at 319, 99 S. Ct. at 2789; *Brooks v. State*, 323 S.W.3d 893, 902 (Tex. Crim. App. 2010); TEX. PENAL CODE § 29.03(a) (West 2010). The game room was a cash operated business that appellant had frequented. Appellant approached the game room with his identity concealed, late at night when the game room was closing. The front door was open and the only two on-duty employees were vulnerable and caught off guard in the parking lot. Appellant did not verbally demand property but, as we recently noted in affirming an aggravated robbery conviction, "[t]he intent to obtain or maintain control of property may be inferred from appellant's actions and a verbal demand for money or property is not required." *Edwards v. State*, 497 S.W.3d 147, 159 (Tex. App.—Houston [1st Dist.] 2016, pet. ref'd).

In *King v. State*, the Fourteenth Court of Appeals affirmed an aggravated robbery conviction on facts similar to those here in the face of the same argument appellant presents, i.e., that there was insufficient evidence of the defendant's intent to rob a store. 157 S.W.3d 873, 874 (Tex. App.—Houston [14th Dist.] 2005, pet. ref'd). In that case, the defendant and an accomplice entered a store together. *Id.*

While the accomplice requested change for a dollar from the store owner, the defendant took a gun out of his backpack and pointed it at the owner. *Id*. When the defendant fired a shot, the store owner dived under the counter for his own gun and started firing at the defendant and accomplice as they fled. *Id*. The *King* court concluded that a rational jury could have inferred from the defendant's conduct that he intended to rob the store owner. *Id*. at 874–75; *see also Chastain v. State*, 667 S.W.2d 791, 795 (Tex. App.—Houston [14th Dist.] 1983, pet. ref'd). ("While no one heard [defendant] or his accomplice actually demand money from the attendant," "the attendant was shot," and "there was sufficient evidence to allow the jury to find that [defendant] w[as] acting with intent to obtain control of the money under the attendant's care, custody, and control.").

Appellant correctly points out that it is not clear who appellant's initial target was. This is because when appellant pointed his gun at both Karediy and Miranda, ordering them to "get down," neither complied. Miranda instead fled inside and locked the door, cutting off game room access if that was appellant's initial target. And when Karediy jumped into his car and locked it, he cut off access to his person and the contents of his car. Nonetheless, appellant tried repeatedly to gain access to the car while still pointing a gun at Karediy. When Karediy started to flee, appellant fired at him multiple times.

Appellant reasons that because the indictment lists only Karediy as the complainant, even if we conclude there was sufficient evidence of appellant's intent to commit robbery, we must conclude that "the state failed to prove an essential element of the aggravated robbery charge" because the evidence does not demonstrate who the intended target was. Appellant points out that it "does not necessarily follow that because a person points a gun at another person, he intends to rob that person." He suggests that it is equally plausible that the "gunman may have had a racial animus against Mr. Karediy, he may have wanted Mr. Karediy to get out of the way so that he could reach the customer inside the game room or maybe the cash inside the game room." We disagree.

There is evidence of more than appellant's pointing a gun at Karediy. Appellant ordered Karediy to the ground when he first approached. When Karediy did not comply, appellant tried repeatedly to gain access to Karediy's locked car. This is circumstantial evidence supporting an intent to rob Karediy of his car or other property on his person or in the car. When Karediy drove away, appellant repeatedly shot as his car, supporting the inference that he was still attempting to stop and gain access to the car's contents or the vehicle itself.

The evidence also established that Karediy was an employee of the game room. So long as an employee is identified and the employment relationship demonstrated at trial, an employee may be designated the "owner" of his or her

employer's property in an indictment alleging theft. *E.g.*, *Garza v. State*, 344 S.W.3d 409, 412–13 (Tex. Crim. App. 2011) (holding that reversal was not warranted when indictment designated employee as complainant and owner of stolen property, despite employer's being actual owner). Accordingly, even under appellant's theory that appellant may have been trying to steal from the game room, the indictment's identifying Karediy as a victim of the aggravated robbery would not render the evidence insufficient.

Finally, we note that it is well-settled in Texas that the intended victim of an attempted theft and the victim of related assaultive conduct in furtherance of that attempt need not be the same person. *White*, 671 S.W.2d at 41–42. Thus, even accepting appellant's speculation that his theft target may have been a game room customer, that does not preclude a conviction based for robbing Karediy, as he was the one appellant assaulted with a deadly weapon. *Id*. ("The element 'intent to obtain or maintain control of the property' . . . deals with the robber's state of mind regarding the property involved in the theft or attempted theft, and not his state of mind in the assaultive component of the offense of aggravated robbery.").

Because we hold there was sufficient evidence to demonstrate that appellant shot at Karediy "in the course of committing theft," TEX. PENAL CODE ANN. § 29.03 (West 2011), we overrule his first point of error.

ADMISSION OF EVIDENCE

Texas Rule of Evidence 702 provides: "If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education may testify thereto in the form of an opinion or otherwise." Under Rule 702, it is the trial court's responsibility to determine whether proffered scientific evidence is sufficiently reliable and relevant to assist the jury. *Jackson v. State*, 17 S.W.3d 664, 670 (Tex. Crim. App. 2000).

In his second point of error, appellant argues that the trial court erred by admitting scientific evidence that his fingerprint matched the print lifted off a cell phone dropped at the robbery scene. His argument is two-fold. First, he contends that in light of growing skepticism—reflected various in scholarly articles, studies, and court opinions—about the accuracy of latent fingerprint analysis, the trial court abrogated its gatekeeping function by leaving it to the jury to determine the scientific reliability of the fingerprint analysis theory and procedures used in this case. Second, he argues that even accepting fingerprinting as a valid forensic practice that the State's expert, Deputy Glover, was qualified to perform, the technique applying the theory in this case was seriously flawed. Appellant asserts that "the unreliable fingerprint evidence was half of the direct evidence against [him] and tended to

overstate the science behind its conclusions," rendering it harmful and entitling him to a new trial.

A. Standard of Review

We review a trial court's ruling on the admissibility of scientific expert testimony under an abuse of discretion standard. *Weatherred v. State*, 15 S.W.3d 540, 542 (Tex. Crim. App. 2000). Under an abuse of discretion standard, we should not disturb the trial court's decision if the ruling was within the zone of reasonable disagreement. *Tillman v. State*, 354 S.W.3d 425, 435 (Tex. Crim. App. 2011).

The erroneous admission of expert testimony is non-constitutional error. *Barshaw v. State*, 342 S.W.3d 91, 93 (Tex. Crim. App. 2011). We must disregard such error if it does not affect substantial rights. TEX. R. APP. P. 44.2(b). An error does not affect substantial rights if, after examining the record as a whole, an appellate court has fair assurance that the error did not influence the jury or had but a slight effect. *Solomon v. State*, 49 S.W.3d 356, 365 (Tex. Crim. App. 2001).

B. Analysis

While the State disputes that the trial court abused its discretion in admitting this testimony, it argues that—in any event—the admission was harmless in light of the other evidence. We agree.

"An error does not affect substantial rights if, after examining the record as a whole, an appellate court has fair assurance that the error did not influence the jury

or had but a slight effect." *Veliz v. State*, 474 S.W.3d 354, 362 (Tex. App.—Houston [14th Dist.] 2015, pet. ref'd) (citing *Solomon v. State*, 49 S.W.3d 356, 365 (Tex. Crim. App. 2001)).

In assessing harm from allegedly erroneously admitted evidence, we consider the entire record, including testimony and physical evidence, jury instructions, the State's and defendant's theories, closing arguments, and voir dire if applicable. *Id*. (citing *Motilla v. State*, 78 S.W.3d 352, 355–56 (Tex. Crim. App. 2002)). The court should also consider the nature of the erroneous evidence and how it might have been perceived by the jury. *Id*. More specifically, the court should consider whether the State emphasized the error, whether the erroneously admitted evidence was cumulative, and whether it was elicited from an expert. *Motilla*, 78 S.W.3d at 356; *Solomon*, 49 S.W.3d at 365. Overwhelming evidence of guilt is relevant to this issue, but it is only one factor in the analysis. *Veliz*, 474 S.W.3d at 362 (citing *Motilla*, 78 S.W.3d at 356–57).

The only issue to which Glover's testimony was relevant was the identity of the perpetrator of the robbery. Although the fingerprint evidence was elicited from an expert, no other relevant factors support appellant's argument that this evidence would have influenced the jury. The fingerprint was found on a cell phone that was found in a pile of things the perpetrator dropped in the Triple 7 parking lot. Defense counsel questioned Glover extensively, in front of the jury, about the lack of

specificity in his testimony. Glover also testified that this represented the second fingerprint match of appellant to the print on the cell phone, and that both times the match was independently reviewed and confirmed by a second person.

Most importantly, there was significantly more compelling scientific evidence linking physical evidence from the crime scene to appellant's identity. While no cell phone was seen by either eye-witness to the robbery until it was later located in the parking lot, the witnesses *did* see the perpetrator wearing a black hat and sunglasses. A black hat and sunglasses were found by police in the same pile in the parking lot that Miranda watched—via his security monitor—the perpetrator abandon after picking up a gun and then fleeing. Appellant could not be excluded as a contributor to DNA found on both of these items. The jury heard testimony that the possibility a random person could be included as a contributor to the black sunglasses—which only contained one source of DNA—is 1 in 4.374 billion for African-Americans; 1 in 97.4 million for Caucasians; and 1 in 58.4 million for Hispanics.

The jury heard evidence that appellant also could not be excluded as a contributor to the DNA from the black hat either. The odds that a random unrelated individual could be included was 1 in 491.5 quintillion for African-Americans; 1 in 4.779 sextillion for Caucasians; and 1 in 4.580 sextillion for Hispanics.

Appellant's wife confirmed at trial that they had lived down the street from the game room, and that he had frequented it at times.

Particularly given the strength of the State's DNA identification evidence, we can state with fair assurance that any allegedly erroneous admission of the latent fingerprint testimony had a slight effect on the jury, if any at all.

We overrule appellant's second point of error.

CONCLUSION

We affirm.

Sherry Radack
Chief Justice

Panel consists of Chief Justice Radack and Justices Keyes and Massengale.

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