

Affirmed and Memorandum Opinion filed April 29, 2010.



In The

Fourteenth Court of Appeals

NO. 14-08-01085-CR

CHRISTOPHER JAMES MCDANIEL, Appellant

V.

THE STATE OF TEXAS, Appellee

**On Appeal from the 263rd District Court
Harris County, Texas
Trial Court Cause No. 1115328**

MEMORANDUM OPINION

Appellant Christopher James McDaniel was convicted of murder and sentenced to eighteen years' imprisonment. In two issues, appellant argues that the evidence is legally and factually insufficient to support his conviction. We affirm.

I. FACTUAL AND PROCEDURAL BACKGROUND

On January 8, 2006, Christopher Stallings and his girlfriend, Monica Foster, were lying in bed when they heard a loud kick at the front door of Stallings's third-floor

apartment. Over Foster's protestations, Stallings jumped out of bed and ran out the front door to investigate. Foster heard Stallings yell "What's up, bitch?" to someone outside the apartment; this was followed by a loud gunshot. Foster then went outside and saw Stallings, covered in blood, dragging himself through the breezeway outside his door.

Foster called 911, and members of the Harris County Sheriff's Department arrived at the scene within five minutes. Stallings had suffered severe trauma to his head and was struggling to breathe. Paramedics arrived shortly thereafter and transported Stallings to a local hospital. Crime scene investigators searched the scene and found shotgun wadding¹ in a puddle of blood in the breezeway, as well as a bloody T-shirt belonging to Stallings. Shotgun pellets were also found in the ceiling and in pieces of trim along the breezeway. This evidence led investigators to conclude that Stallings had been shot with a shotgun. Officers performed gunshot residue tests on Foster and another individual but found no evidence that either of them had recently fired a gun. No fingerprint, blood, or DNA evidence belonging to anyone other than Stallings was recovered from the scene. Additionally, no shotgun or shotgun shells were recovered. Foster did not see who shot Stallings, and none of the apartment complex's residents could provide a detailed description of the shooter.

In April 2006, Crime Stoppers received an anonymous tip that led officers to develop appellant as a suspect in the shooting. The caller provided details of the incident that could only be known by a person who was present at the scene or had been told about the shooting. Based on this tip, Sergeant Craig Clopton—the lead investigator in the case—obtained a warrant for appellant's arrest. Sergeants Clopton and Felipe Rivera transported appellant to a local sheriff's office after executing the warrant at appellant's mother's apartment. Appellant was informed of his rights and provided a written statement in which he admitted his involvement in the shooting. He was subsequently

¹ A crime scene investigator testified that shotgun wadding is material inside a shotgun shell that either holds the shell's lead plug or pellets. When a shotgun is fired, the wadding is ejected from the barrel along with the slug or the pellets.

indicted for aggravated assault. On September 28, 2006, Stallings died as a result of his injuries. The assault charges against appellant were dropped, and appellant was indicted for murder.

At trial, Foster testified for the State about the night of the shooting. She stated that Stallings was shot after leaving the apartment to investigate the loud kick on his front door. Several members of the Harris County Sheriff's Department testified about Stallings's condition when they arrived on the scene. They also outlined the collection of the shotgun pellets and wadding and other evidence obtained at the scene. Lloyd White, a Deputy Medical Examiner for the Tarrant County Medical Examiner's District,² testified about the cause of Stallings's death. An examination of Stallings's body showed that he had been shot in the head with a shotgun. As a result, he underwent major head surgery where a large portion of his skull had been removed and replaced. Shotgun pellets were found inside Stallings's scalp and brain, and his brain showed "a very large area of scarring" caused by surgery. White concluded that Stallings suffered serious complications related to the shotgun wound and that these complications caused Stallings's death.

Appellant's written statement was also entered into evidence. Sergeant Clopton testified that appellant, after being informed of his rights on two separate occasions, waived his rights and voluntarily provided the statement. In his statement, appellant admitted that he was at Stallings's apartment complex on the night of the shooting. He stated that he and a group of five friends³ decided to kick on apartment doors and run away, and that the group was passing a Mossberg twelve-gauge shotgun between them at the time. Appellant claimed he was on the ground floor when one of his friends kicked on the door of a third-floor apartment. A man came out of the door, and appellant and one of his friends ran through the first-floor breezeway to the other side of the building. The man

² Stallings was initially treated in Harris County but was eventually transferred to Tarrant County for further treatment and hospice care. Stallings died in Tarrant County.

³ Appellant declined to identify any of his companions.

saw the young men running away and yelled out “You punk bitch.” One of appellant’s friends threw the shotgun down as they ran away. According to appellant, he tried to catch the gun, but his finger “accidentally hit the trigger and the shotgun went off” as the butt of the gun hit the ground. Appellant heard the man on the third floor scream in pain, but did not look up to see where he had been shot. Appellant then picked up the empty shell casing, ran away, and threw the casing in a dumpster somewhere away from the apartment complex. Appellant stated that the shooting was an accident and that he did not intend to shoot or hurt anyone.

Sergeant Clopton testified that he did not believe appellant was completely honest while giving this statement because some of appellant’s facts did not match the evidence gathered from the scene. Based on the investigation, Sergeant Clopton believed the shotgun was not fired from the ground floor. He stated that the shotgun wadding and pellets would have had to travel through a slab of concrete to reach the third floor from the ground floor. Sergeant Clopton additionally testified that Mossberg-brand shotguns are pump-action, meaning that a shell would not be expelled unless someone intentionally pulled the pump. He stated that Mossberg shotguns also commonly have trigger guards that prevent accidental firings. Sergeant Clopton also stated that appellant provided information that only someone who was at the scene could have known. For example, appellant’s statement matched Foster’s version of events in that Stallings exchanged words with someone outside his door before shots were fired. Appellant also stated that Stallings was shot with a shotgun and that he took the shotgun shell from the scene. Investigators knew a shotgun was involved, and they did not recover a shell from the surrounding area. During cross-examination, Sergeant Clopton agreed that appellant’s statement was the only evidence linking appellant to the shooting.

Appellant testified on his own behalf at trial and alleged that he was not informed of his rights at the time of his arrest or when his interrogation began. Appellant admitted

initialing and signing the statement,⁴ but denied giving the statement, reading the statement before signing it, or knowing anything about the shooting. Appellant also stated that he signed the statement only after Sergeant Clopton threatened to arrest his mother and sister if he did not cooperate. Sergeants Clopton and Rivera denied threatening appellant in any way and stated that appellant was informed of his rights on several occasions and voluntarily waived them.

Appellant testified that he was living with a family member in Texas City, which is in Galveston County, on the date of the shooting and that he was not in Harris County when the shooting occurred. While appellant stated that he gave this information to police, Sergeant Rivera testified the sheriff's department never received any information that appellant was not in Harris County when the shooting occurred. Appellant's cousin, aunt, and mother each testified that appellant lived with his aunt in Texas City from around January 4, 2006 until March 2006. None of these family members could specifically account for appellant's whereabouts on the day of the shooting, but they each stated he was not in Houston. During the two years appellant was in custody prior to trial, none of his family members informed law enforcement that he was not in Houston when the shooting occurred. Appellant admitted that he did not work or attend school while in Texas City, so there was no other evidence showing he resided there. In rebuttal, the State introduced a letter written by appellant's brother while appellant was incarcerated which stated that appellant's family members could not say what appellant was doing on January 8, 2006.

After hearing all the evidence, the jury convicted appellant of murder and assessed punishment at eighteen years' confinement. In two issues, appellant contends the evidence is legally and factually insufficient to support his conviction.⁵

⁴ Appellant's initials are present twice next to each of the statutory warnings set forth in the Texas Code of Criminal Procedure. *See* TEX. CODE CRIM. PROC. ANN. art. 38.22, § 2(a) (Vernon 2005). His initials are also present at the beginning and end of each paragraph of the statement's text. The full signatures of appellant and Sergeants Clopton and Rivera are present at the end of the statement.

⁵ The State urges us to overrule appellant's issues because they are inadequately briefed. Issues

II. LEGAL SUFFICIENCY OF THE EVIDENCE

Appellant was charged in a two-paragraph indictment under sections 19.02(b)(1) and 19.02(b)(2) of the Texas Penal Code, and the jury charge tracked the language of the indictment. The indictment's first paragraph alleged that appellant intentionally and knowingly caused Stallings's death by shooting Stallings with a deadly weapon, namely a firearm. *See* TEX. PENAL CODE ANN. § 19.02(b)(1) (Vernon 2003). The indictment's second paragraph alleged that appellant intended to cause serious bodily injury to Stallings and caused Stallings's death by intentionally and knowingly committing an act clearly dangerous to human life, namely shooting Stallings with a firearm. *See id.* § 19.02(b)(2) (Vernon 2003). In his first issue, appellant contends the evidence is legally insufficient to support his conviction because the State failed to prove he "committed the offense of murder as alleged in the indictment."

1. Standard of Review

In conducting a legal-sufficiency review, we view the evidence in the light most favorable to the verdict and determine whether any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. *Salinas v. State*, 163 S.W.3d 734, 737 (Tex. Crim. App. 2005). We do not ask whether we believe the evidence at trial established guilt beyond a reasonable doubt. *Jackson v. Virginia*, 443 U.S. 307, 318–19 (1979). We may not re-weigh the evidence and substitute our judgment for that of the trier of fact. *King v. State*, 29 S.W.3d 556, 562 (Tex. Crim. App. 2000). The jury is

may be overruled if an appellant's brief does not "contain a clear and concise argument for the contentions made, with appropriate citations to authorities and to the record." TEX. R. APP. P. 38.1(i); *see also* *Russeau v. State*, 171 S.W.3d 871, 881 (Tex. Crim. App. 2005) (overruling two of appellant's issues as inadequately briefed because "appellant provide[d] no argument or authority" with respect to the issues). Here, appellant sets forth the applicable standards of review for legal and factual-sufficiency challenges in his brief, but fails to apply relevant law to the evidence. However, public policy disfavors disposing of appeals based upon harmless procedural defects. *See* *Few v. State*, 230 S.W.3d 184, 189 (Tex. Crim. App. 2007); *see also, e.g., Aguilar v. State*, 202 S.W.3d 833, 837 (Tex. App.—Waco 2006, pet. ref'd) (considering appellant's legal and factual sufficiency issues in the interest of justice when appellant failed to clearly state which elements of the State's case he was challenging). Accordingly, in the interest of justice, we will consider appellant's challenges to the sufficiency of the evidence.

the exclusive judge of the credibility of witnesses and of the weight to be given to their testimony. *Jones v. State*, 944 S.W.2d 642, 647 (Tex. Crim. App. 1996). Reconciliation of conflicts in the evidence is within the exclusive province of the jury. *Id.* We must resolve any inconsistencies in the testimony in favor of the verdict. *Curry v. State*, 30 S.W.3d 394, 406 (Tex. Crim. App. 2000).

2. Discussion

A person commits murder if he intends to cause serious bodily injury and commits an act clearly dangerous to human life that causes the death of an individual. *See* TEX. PENAL CODE ANN. § 19.02(b)(2). “Serious bodily injury” is defined as bodily injury creating a substantial risk of death or causing death, serious permanent disfigurement, or protracted loss or impairment of the function of any bodily member or organ. *See id.* § 1.07(a)(46) (Vernon 2003 & Supp. 2009); *Trevino v. State*, 228 S.W.3d 729, 736 (Tex. App.—Corpus Christi 2006, pet. ref’d). 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. TEX. PENAL CODE ANN. § 6.03(a) (Vernon 2003).

In homicide prosecutions, the defendant’s state of mind is a question of fact that must be determined by the jury. *See Brown v. State*, 122 S.W.3d 794, 800 (Tex. Crim. App. 2003). The jury may infer an intent to cause serious bodily injury from (1) the acts and words of the accused, (2) the manner in which the offense was committed, (3) the nature of the wounds inflicted, and (4) the relative size and strength of the parties. *Payne v. State*, 194 S.W.3d 689, 694 (Tex. App.—Houston [14th Dist.] 2006, pet. ref’d); *see also Guevara v. State*, 152 S.W.3d 45, 50 (Tex. Crim. App. 2004) (stating intent may be inferred from circumstantial evidence including the acts, words, and conduct of the accused). The State is not required to prove an intent to kill in a prosecution under penal code section 19.02(b)(2). *See Medina v. State*, 7 S.W.3d 633, 638 n.4 (Tex. Crim. App. 1999); *Ramirez v. State*, 229 S.W.3d 725, 729 (Tex. App.—San Antonio 2007, no pet.).

In his statement provided to Officer Clopton, appellant acknowledged shooting Stallings after he and a group of friends intentionally kicked on Stallings's front door. An extrajudicial confession alone will not support a conviction unless there is some evidence outside of the confession, considered alone or in connection with the confession, showing beyond a reasonable doubt that the charged crime occurred. *See Salazar v. State*, 86 S.W.3d 640, 644–45 (Tex. Crim. App. 2002). In murder cases, this requirement is satisfied if the evidence shows the criminal act of one person caused the death of another. *McDuff v. State*, 939 S.W.2d 607, 614 (Tex. Crim. App. 1997). Here, the evidence shows that appellant and his friends were passing a loaded shotgun among themselves before Stallings was shot. Appellant fired the shotgun, heard Stallings scream out in pain, and then ran from the scene. The evidence further shows that Stallings suffered severe injuries from the shotgun blast and that he died eight months later due to complications from the gunshot wound.

After considering appellant's confession, the manner in which Stallings was shot, and the nature and severity of Stallings's wounds, the jury could properly infer that appellant intended to cause Stallings serious bodily injury. *See Payne*, 194 S.W.3d at 694. The jury could also reasonably infer that appellant caused Stallings's death while intentionally committing an act clearly dangerous to human life by shooting Stallings with a shotgun. *See Forest v. State*, 989 S.W.2d 365, 368 (Tex. Crim. App. 1999) (stating that "firing a gun in the direction of an individual is an act clearly dangerous to human life"); *Goodin v. State*, 726 S.W.2d 956, 959 (Tex. App.—Fort Worth 1987), *aff'd*, 750 S.W.2d 789 (Tex. Crim. App. 1988) (finding intent to cause serious bodily injury or death from defendant's admission that he pointed gun at deceased and pulled the trigger). The State, therefore, met its burden of proving appellant committed murder as alleged in the second paragraph of the indictment. *See TEX. PENAL CODE ANN. § 19.02(b)(2)*.

After reviewing the record in the light most favorable to the verdict, we find that appellant's written statement, combined with evidence showing the charged offense

occurred, provides sufficient evidence to support appellant's conviction. *See Salazar*, 86 S.W.3d at 644–45; *McDuff*, 939 S.W.2d at 614. We conclude that a rational trier of fact could have found the essential elements of the charged offense beyond a reasonable doubt. *See Salinas*, 163 S.W.3d at 737. The evidence is therefore legally sufficient to support appellant's conviction.⁶ We overrule appellant's first issue.

III. FACTUAL SUFFICIENCY OF THE EVIDENCE

1. Standard of Review

In his second issue, appellant contends the evidence is factually insufficient to support his conviction. In a factual-sufficiency review, we review all the evidence in a neutral light, favoring neither party. *Watson v. State*, 204 S.W.3d 404, 414 (Tex. Crim. App. 2006). We then ask (1) whether the evidence supporting the conviction, although legally sufficient, is nevertheless so weak that the jury's verdict seems clearly wrong and manifestly unjust or (2) whether the jury's verdict is against the great weight and preponderance of the evidence due to conflicting evidence. *Id.* at 414–15. A jury finding is not manifestly unjust merely because the jury resolved conflicting views of evidence in favor of the State. *Cain v. State*, 958 S.W.2d 404, 410 (Tex. Crim. App. 1997). The jury is the sole judge of the facts, the credibility of the witnesses, and the weight to be given the evidence. *Wyatt v. State*, 23 S.W.3d 18, 30 (Tex. Crim. App. 2000). The jury may choose to believe all, some, or none of the testimony presented. *Chambers v. State*, 805 S.W.2d 459, 461 (Tex. Crim. App. 1991); *In re A.B.*, 133 S.W.3d 869, 872 (Tex. App.—Dallas 2004, no pet.). In our review, we discuss the evidence appellant contends is most important in allegedly undermining the jury's verdict. *Sims v. State*, 99 S.W.3d 600, 603 (Tex. Crim. App. 2003).

⁶ Where, as here, the jury charge authorizes the jury to convict on several different theories, a general verdict of guilty will be upheld so long as the evidence is sufficient under any one of the theories. *See Swearingen v. State*, 101 S.W.3d 89, 95 (Tex. Crim. App. 2003); *Herrin v. State*, 125 S.W.3d 436, 441 (Tex. Crim. App. 2002). Because we conclude the evidence is legally sufficient to sustain appellant's conviction under section 19.02(b)(2) of the penal code, we need not discuss section 19.02(b)(1).

2. Discussion

Appellant insists the evidence is factually insufficient due to several inconsistencies and inaccuracies. At trial, defense counsel pointed out the inconsistencies and inaccuracies between the version of events contained in appellant's confession and Sergeant Clopton's testimony concerning how Stallings was shot. In his confession, appellant stated he fired the shotgun "accidentally" while trying to catch it in mid-air. Sergeant Clopton testified this was improbable because Mossberg shotguns possess trigger guards to prevent accidental firings. Appellant also stated in his confession that he was standing on the ground floor of Stallings's apartment building when he fired the shotgun. Sergeant Clopton stated this scenario was unlikely because the location and spread of the shotgun pellets imbedded in the ceiling and trim of the third floor did not match the spread of pellets that would have resulted from a shotgun being fired from the ground floor. Sergeant Clopton also stated the shotgun wadding found at the scene could not have penetrated the concrete floors between the ground and third floors. Sergeant Clopton testified he did not believe appellant was being completely truthful when giving his confession, and stated the physical evidence showed that Stallings was shot from near a stairway leading from the building's third floor to the second floor.

Not all of the facts contained in appellant's confession, however, contradicted the evidence gathered from the scene. For instance, appellant's statement that Stallings was struck by a shotgun blast is supported by the evidence. Appellant's confession indicates that Stallings was shot after appellant and his friends kicked on Stallings's front door. This is corroborated by Foster's testimony that she heard a gunshot after Stallings raced to check on a loud kick they heard at the door. Appellant's confession and Foster's testimony are also similar in that they each note Stallings's curses were directed toward an individual outside his door. Additionally, appellant admitted picking up the shotgun shell ejected after firing the weapon, and investigators were unable to find a shotgun shell while collecting evidence. Sergeant Clopton agreed that much of the information contained in

appellant's confession matching the evidence collected by investigators could only have been provided by someone who knew details concerning the shooting or was present when Stallings was shot.

The jury is the sole judge of the facts and the credibility to be given to the evidence. *See Wyatt*, 23 S.W.3d at 30. The jury is also free to consider all of the evidence and to believe or disbelieve any portion of a confession. *Sorto v. State*, 173 S.W.3d 469, 475 (Tex. Crim. App. 2005); *see also Herrero v. State*, 124 S.W.3d 827, 834–35 (Tex. App.—Houston [14th Dist.] 2003, no pet.) (overruling appellant's argument that inconsistencies in trial testimony and the lack of physical evidence tying appellant to a murder created factually insufficient evidence to support his conviction); *Torres v. State*, 92 S.W.3d 911, 916–17 (Tex. App.—Houston [14th Dist.] 2002, pet. ref'd) (overruling appellant's factual-sufficiency challenge and stating that jury could choose to believe incriminating statements made by appellant to others). In this case, the jury apparently chose to believe that appellant confessed to shooting Stallings, despite any inconsistencies between his confession and the evidence at trial. The evidentiary conflicts pointed out by appellant's counsel at trial do not render the evidence factually insufficient to support appellant's conviction.

Defense counsel also emphasized the conflicting evidence regarding appellant's whereabouts on the night Stallings was shot. In his confession, appellant admitted to being at Stallings's apartment complex on the night of the shooting. However, appellant testified at trial that he was in Texas City when Stallings was shot. Appellant testified that, during police questioning, he informed investigators he was in Texas City when the shooting occurred. Sergeant Rivera, who was present during portions of appellant's police interview, denied this contention. Several of appellant's family members also testified that appellant could not have shot Stallings because he was in Texas City when the incident occurred. To rebut this contention, the State introduced the letter written by appellant's brother stating that several members of the family told appellant's attorney that

they could not say what appellant was doing on the night of the shooting. Additionally, none of appellant's family members told anyone of appellant's alibi until they testified at trial, and no one could say where appellant was at the time of the shooting. When questioned by the State, appellant admitted that he was unable to provide any evidence showing he worked or attended school during the period he was allegedly in Texas City to support his alibi.

As discussed above, the jury is free to believe or disbelieve any portion of any witness's testimony. *See Wyatt*, 23 S.W.3d at 30. Based upon the jury's verdict, the jury chose to believe the portion of appellant's confession in which he admitted being at Stallings's apartment complex when the shooting occurred rather than the testimony indicating appellant was in Texas City. A factual-sufficiency challenge will not be sustained simply because there is conflicting evidence upon which the fact finder could have reached a different conclusion. *Manning v. State*, 112 S.W.3d 740, 747 (Tex. App.—Houston [14th Dist.] 2003, pet. ref'd). After conducting a neutral review of the evidence, we cannot say, with some objective basis in the record, that appellant's conviction is clearly wrong or manifestly unjust, or that the great weight of the evidence preponderates against the jury's verdict. *See Watson*, 204 S.W.3d at 414–17. We therefore find the evidence to be factually sufficient to support appellant's conviction. We overrule appellant's second issue.

IV. CONCLUSION

After reviewing the record, we find that the evidence is both legally and factually sufficient to support appellant's conviction. We therefore affirm the trial court's judgment.

/s/ Leslie B. Yates
Justice

Panel consists of Justices Yates, Frost, and Brown.

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