Affirmed and Memorandum Opinion filed July 29, 2010.

In The

Fourteenth Court of Appeals

NO. 14-08-01149-CR

STEVEN MARK WEINSTEIN, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the 339th District Court
Harris County, Texas
Trial Court Cause No. 1167730

MEMORANDUM OPINION

Appellant Steven Mark Weinstein appeals his conviction for murder, contending that the evidence presented is both legally and factually insufficent to support the trial court's judgment. We affirm.

I. FACTUAL AND PROCEDURAL BACKGROUND

Police officers were dispatched in March 2007, to a townhome complex in response to complaints about a foul odor emanating from appellant's townhome. An officer believed the odor to be that of human remains, and a cadaver dog called to the complex confirmed the officer's suspicion. The officers obtained a search warrant. Inside a garage belonging to appellant, in the trunk of a vehicle, officers discovered the

partially decomposed body of the complainant Jerry Glaspie, bound at the wrists and ankles. Some type of netting or duct tape was wrapped around the face and neck. Officers also discovered an engine hoist in the garage and various insecticides, cleaning agents, and deodorizers throughout the house.

Appellant was charged by indictment with the murder, by strangulation with a deadly weapon, which, according to the indictment, was an unknown object. Appellant pleaded "not guilty" to the charge, and the case proceeded to trial by jury.

At trial, officers in the investigation testified that the complainant was last seen alive on January 29, 2007, when he borrowed a vehicle from a friend with whom appellant lived. According to the friend, the complainant was a known drug dealer who regularly borrowed his friend's vehicle to promote his narcotics business. The complainant had told his friend that he was making several stops, one of which was at appellant's house. That evening, the complainant's friend received several phone calls from concerned friends regarding the complainant's whereabouts, because the complainant had not stopped by as planned. The next day, the complainant's friend filed a missing-person report with the Houston Police Department. A week later, the borrowed vehicle was found several blocks from appellant's home, showing no signs of theft; the complainant was still missing.

According to mutual friends of both the complainant and appellant, appellant and the complainant had an estranged relationship after a partnership between the two for a large narcotics transaction had failed. In August or September of 2006, appellant and the complainant traveled to Dallas to purchase a large quantity of methamphetamines. Appellant provided approximately $14,000 for the narcotics and returned to Houston while the complainant remained in Dallas to purchase the methamphetamines. After staying in Dallas for an extended period of time, the complainant returned to Houston approximately two months later without any drugs or appellant's money.

According to some of the mutual friends, during the time the complainant was in Dallas, appellant became very angry with the complainant and tried to contact him about the money. The complainant had stopped taking appellant's phone calls, so appellant contacted several of the complainant's friends by phone or through a social website. According to the complainant's friends, on several occasions, appellant tried to get his money back by convincing friends to help trick the complainant to return to Houston so appellant could "scare" or "hurt" him. A friend of both appellant and the complainant testified that appellant showed interest in drugging the complainant, tying him up, and bringing him back to Houston to try and get his money back.

Residents who lived in appellant's complex testified to calling the police several times in February or March of 2007, complaining about a horrible odor emanating from appellant's unit. The residents claimed to have left several notes for appellant regarding the odor that was coming from appellant's garage. According to testimony from residents and investigating officers, when questioned about the odor, appellant explained that his former roommate left rotting meat hidden throughout his home and that he was in the process of cleaning up the mess. According to an investigating officer, when asked for permission to enter the garage, appellant refused to allow police officers to enter.

Appellant's cellmate testified that while in jail awaiting trial, appellant discussed committing murder and demonstrated on the cellmate how he accomplished the complainant's murder by placing a towel around the cellmate's neck and lightly choking him. The cellmate testified appellant claimed to have been mad at the complainant for taking his money. The cellmate testified that appellant stated how he could no longer open the trunk of the vehicle because of the swelling of the complainant's decomposing body, and, in order to open the trunk, appellant purchased an engine hoist. The cellmate also said appellant described the horrible odor coming from the body and how he tried to mask the scent with deodorizers and ice.

An autopsy report admitted into evidence at trial reflected that the complainant's death was a homicide, but was inconclusive as to the cause of death due to the advanced decomposition of the body. The medical examiner testified that bones in the complainant's neck had separated, which could have been caused by strangulation. He explained that death by strangulation could have been facilitated by a towel, an arm, human hands, or an unknown object. Also, the medical examiner concluded duct tape around the neck of the complainant's body, which appeared to have slipped from the complainant's face during decomposition, may have asphyxiated the complainant. The medical examiner testified that he does not typically find bindings and ligatures on a person who dies a natural death, which was unlikely in this case.

A jury found appellant guilty of murder, sentenced him to thirty years' confinement, and assessed a $10,000 fine.

II. SUFFICIENCY OF THE EVIDENCE

In two issues appellant challenges the legal and factual sufficiency of the evidence to support his conviction. In evaluating a legal-sufficiency challenge, we view the evidence in the light most favorable to the verdict. *Wesbrook v. State*, 29 S.W.3d 103, 111 (Tex. Crim. App. 2000). The issue on appeal is not whether we, as a court, believe the State's evidence or believe that appellant's evidence outweighs the State's evidence. *Wicker v. State*, 667 S.W.2d 137, 143 (Tex. Crim. App. 1984). The verdict may not be overturned unless it is irrational or unsupported by proof beyond a reasonable doubt. *Matson v. State*, 819 S.W.2d 839, 846 (Tex. Crim. App. 1991). The jury, as the trier of fact, "is the sole judge of the credibility of the witnesses and of the strength of the evidence." *Fuentes v. State*, 991 S.W.2d 267, 271 (Tex. Crim. App. 1999). The jury may choose to believe or disbelieve any portion of the witnesses' testimony. *Sharp v. State*, 707 S.W.2d 611, 614 (Tex. Crim. App. 1986). When faced with conflicting evidence, we presume the trier of fact resolved conflicts in favor of the prevailing party. *Turro v. State*, 867 S.W.2d 43, 47 (Tex. Crim. App. 1993). Therefore, if any rational trier of fact

could have found the essential elements of the crime beyond a reasonable doubt, we must affirm. *McDuff v. State*, 939 S.W.2d 607, 614 (Tex. Crim. App. 1997). This standard is the same whether the evidence is direct or circumstantial. *Green v. State*, 840 S.W.2d 394, 401 (Tex. Crim. App. 1992). The question is not whether a rational jury could have entertained a reasonable doubt of guilt, but whether it necessarily would have done so. *See Swearingen v. State*, 101 S.W.3d 89, 96 (Tex. Crim. App. 2003).

In contrast, when evaluating a challenge to the factual sufficiency of the evidence, we view all the evidence in a neutral light and inquire whether we are able to say, with some objective basis in the record, that a conviction is "clearly wrong" or "manifestly unjust" because the great weight and preponderance of the evidence contradicts the jury's verdict. *Watson v. State*, 204 S.W.3d 404, 414–17 (Tex. Crim. App. 2006). It is not enough that this court harbor a subjective level of reasonable doubt to overturn a conviction that is founded on legally sufficient evidence, and this court cannot declare that a conflict in the evidence justifies a new trial simply because it disagrees with the jury's resolution of that conflict. *Id*. at 417. If this court determines the evidence is factually insufficient, it must explain in exactly what way it perceives the conflicting evidence greatly to preponderate against conviction. *Id*. at 414–17. Our evaluation should not intrude upon the fact finder's role as the sole judge of the weight and credibility given to any witness's testimony. *See Fuentes*, 991 S.W.2d at 271. Unless issuing a memorandum opinion, in conducting a factual-sufficiency review, we are to address the evidence appellant claims is most important in allegedly undermining the jury's verdict. *Sims v. State*, 99 S.W.3d 600, 603 (Tex. Crim. App. 2003).

A person commits the offense of murder if the person intentionally or knowingly causes the death of an individual or intends to cause serious bodily injury and commits an act clearly dangerous to human life that causes the death of an individual. TEX. PENAL CODE ANN. § 19.02(b)(1), (2) (Vernon 2003). A person acts 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). A person acts knowingly with respect to his conduct when that person is aware the conduct is reasonably certain to cause the result. TEX. PENAL CODE ANN. § 6.03(a) (Vernon 2003).

Appellant contends that there is no evidence he caused the complainant's death or intended to cause the complainant's death. Appellant claims the only evidence presented at trial shows his intention to scare the complainant, not the intent to commit murder. Intent, being a question of fact, is in the sole purview of the jury. *Brown v. State*, 122 S.W.3d. 794, 800 (Tex. Crim. App. 2003). A jury may rely on collective common sense and common knowledge when determining intent. *Ramirez v. State*, 229 S.W.3d 725, 729 (Tex. App.—San Antonio 2007, no pet.). Intent also may be inferred from the circumstantial evidence surrounding the incident, which includes acts, words, and conduct of the accused. *See* TEX. CODE CRIM. PROC. ANN. art. 38.36(a) (Vernon 2005); *Patrick v. State*, 906 S.W.2d 481, 487 (Tex. Crim. App. 1995). Each fact need not point directly or independently to the guilt of appellant; the verdict will be upheld as long as the cumulative effect of all the incriminating facts are sufficient to support the verdict. *See Guevara v. State*, 152 S.W.3d 45, 52 (Tex. Crim. App. 2004) (stating that although each piece of evidence lacked sufficiency in isolation, the consistency of the evidence and the rational inferences drawn were sufficient to support the State's theory that accused was a participant in the murder of his wife).

Testimony was presented at trial that tension and conflict arose between appellant and the complainant when the complainant returned from Dallas without appellant's money or narcotics. *See Alexander v. State*, 229 S.W.3d 731, 740 (Tex. App.—San Antonio 2007, pet. ref'd) (considering intent in light of accused's actions and statements during and after the incident, the relationship between accused and the complainant, as well as the extent of the complainant's injuries to find evidence legally and factually sufficient). Witnesses testified that on several occasions appellant expressed a desire to

find the complainant and either "scare" or "hurt" him. *See Jackson v. State*, 115 S.W.3d 326, 329 (Tex. App.—Dallas 2003), *aff'd*, 160 S.W.3d 568 (Tex. Crim. App. 2005) (holding that evidence was legally and factually sufficient to show that defendant had intent to kill his brother when earlier that evening the two were seen fighting, there was testimony that defendant threatened to hurt his brother, and defendant admitted to hitting his brother in the head with a hammer).

Appellant also contends that the cause of death could not be determined. The medical examiner determined the manner of death to be a homicide. Although the final determination to the cause of death was inconclusive, the medical examiner testified that, most likely, the complainant died by an asphyxia mechanism. *See Scott v. State*, 732 S.W.2d 354, 359 (Tex. Crim. App. 1987) (concluding that it is immaterial that the exact cause of death could not be determined). The medical examiner stated that an asphyxia mechanism could include asphyxiation by hands, a towel, duct tape around the nose and mouth, or an unknown object. The medical examiner also testified that the disarticulation of the complainant's neck bones was consistent with, although not necessarily caused by, strangulation.

Testimony was presented that when the complainant was last seen alive, he was on his way to see appellant in order to discuss the missing money and drugs. *See Reeves v. State*, 969 S.W.2d 471, 479 (Tex. App.—Waco 1998, pet. ref'd.) (involving evidence that the accused was the last to see the complainant alive, had the best opportunity and motive to kill the complainant, and attempted to get rid of incriminating evidence as legally sufficient evidence to support that the accused caused the complainant's death). The complainant's decomposed body was found bound and gagged in the trunk of appellant's vehicle inside appellant's garage. *See id.* The vehicle which the complainant had been seen driving that day was found in close proximity to appellant's home without any signs of foul play or theft. These factors, especially when combined, can be considered

evidence of appellant's intent to cause the complainant's death and would support a trier of fact's conclusion to that effect. *See id*. at 479–80.

Appellant claims that although the complainant's body was found at his home, there was no confession other than his cellmate's unreliable testimony. The jury, as the trier of fact, serves as the sole judge of the credibility of the witness and of the strength of the evidence, and the jury was free to accept or reject any portion of the witnesses' testimony. *See Sharp*, 707 S.W.2d at 614. The jury was free to believe or disbelieve the cellmate's testimony as to appellant's comments and demonstration of strangling the complainant. *See Durant v. State*, 688 S.W.2d 265, 267 (Tex. App.—Fort Worth 1985, pet. ref'd) (stating the jury was entitled to consider the witness's past criminal record and relationship with the accused in evaluating testimony and weighing credibility). The cellmate testified that appellant confessed to strangling the complainant and placing his body in the trunk of appellant's car. The cellmate testified that appellant, using a towel, demonstrated the technique he used to strangle the complainant. According to the cellmate's testimony, appellant explained how the complainant's body began to swell and that he purchased an engine lift in order to open the trunk of the car. The cellmate testified that appellant described how he attempted to cover the odor of the decomposing body with deodorizers and ice. The police found an engine lift in the garage and deodorizers and cleaning supplies throughout the house and garage. Though no one claims to have seen the offense, the record supports a finding that the evidence is sufficient to satisfy causation. *See Herrero v. State*, 124 S.W.3d 827, 832–35 (Tex. App.—Houston [14th Dist.] 2003, no pet.) (upholding a conviction for murder where witnesses testified that defendant described how he committed the crime, and the testimony was corroborated by an officer examining the body at the scene); *see also Swearingen*, 101 S.W.3d. at 98 (stating the corroboration between the forensic evidence and the rendition of the crime in a letter written by the accused was factually sufficient and did not undermine the great weight and preponderance of the evidence).

Although appellant claims there was no evidence to show intent, guilt can be shown by the accused's concealment of incriminating evidence and contradictory statements. *Guevara*, 152 S.W.3d at 50 (involving evidence that appellant made several false statements to authorities, which suggested appellant's complicity in the crime). "Attempts to conceal incriminating evidence, inconsistent statements, and implausible explanations to the police are probative of wrongful conduct and are also circumstances of guilt." *Id*. On several occasions, appellant explained to his neighbors that the foul odor emanating from his garage was from rotting meat a former roommate had left in the home. The police did not find any rotting meat on the premises, but instead discovered the complainant's body decomposing in a vehicle in appellant's garage. Testimony at trial reflects that appellant made several statements to the police and residents of his complex about the source of the odor. *See id.*; *Alexander*, 229 S.W.3d at 740 (stating evidence was legally and factually sufficient to support jury's finding that defendant intentionally caused the death of victim when defendant provided inconsistent statements about how the victim's injuries occurred and those statements contradicted medical evidence). Furthermore, the cellmate testified that appellant claimed to have used disinfectants and deodorizers to mask the odor; investigators found the garage floor covered in a white substance resembling baking soda, apparently used in an attempt to mask the odor. *See Reeves*, 969 S.W.3d at 479 (providing the jury was free to infer that the defendant was disposing of incriminating evidence). Appellant's guilt may be inferred from the cellmate's testimony that appellant attempted to conceal the odor of the decomposing body with cleaning supplies and baking soda. *See id.*

Viewing the evidence in the light most favorable to the verdict, we conclude a rational trier of fact could have found the elements of murder beyond a reasonable doubt. *Alexander*, 229 S.W.3d at 740. Likewise, viewing the evidence in a neutral light, we are not able to say with some objective basis in the record that the jury's determination that appellant committed the charged offense is clearly wrong or manifestly unjust because the great weight and preponderance of the evidence contradicts the jury's verdict. *Id.*

We conclude the evidence is legally and factually sufficient to support the murder conviction, and we overrule appellant's two issues on appeal.

Having overruled the appellant's challenges to the sufficiency of the evidence, we affirm the trial court's judgment.

/s/ Kem Thompson Frost
Justice

Panel consists of Justices Frost, Boyce, and Sullivan.
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