

In The
Court of Appeals
Ninth District of Texas at Beaumont

NO. 09-10-00167-CR

JOSEPH GLENN GOODRICH, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the 411th District Court
Polk County, Texas
Trial Cause No. 19098

MEMORANDUM OPINION

A jury found Joseph Glenn Goodrich guilty of the first-degree felony offense of murdering Johnny Ray Bogany. *See* Tex. Penal Code Ann. § 19.02(b)(1), (c) (West 2003). On appeal, Goodrich raises five issues. In issues one and two, Goodrich challenges the sufficiency of the evidence supporting the jury's verdict. In issue three, Goodrich complains of the trial court's decision to admit an audio-recorded voicemail message from Goodrich to Bogany. Issue four asserts that the trial court deprived Goodrich of a fair and impartial jury because some jurors saw Goodrich handcuffed

outside the courtroom and then escorted through the courthouse to a waiting patrol car. In issue five, Goodrich complains that the trial court, during his sentencing hearing, failed to orally pronounce its decision that Goodrich reimburse the State for paying his court-appointed attorney's fees. We affirm the trial court's judgment.

Sufficiency Issues

In his first two issues, Goodrich argues that the evidence is legally and factually insufficient to support his conviction. In a sufficiency review, an appellate court considers all the evidence in the light most favorable to the verdict to determine whether any rational trier of fact could have found the essential elements of the offense beyond a reasonable doubt. *Hooper v. State*, 214 S.W.3d 9, 13 (Tex. Crim. App. 2007) (citing *Jackson v. Virginia*, 443 U.S. 307, 318-19, 99 S.Ct. 2781, 61 L.Ed.2d 560 (1979)). Under the *Jackson* standard, the reviewing court gives full deference to the jury's responsibility to fairly resolve conflicts in the testimony, to weigh the evidence, and to draw reasonable inferences from basic facts to ultimate facts. *Id.* In *Brooks*, the Court of Criminal Appeals concluded that there is no meaningful distinction between legal sufficiency review and factual sufficiency review. *Brooks v. State*, 323 S.W.3d 893, 902 (Tex. Crim. App. 2010) (overruling *Clewis v. State*, 922 S.W.2d 126 (Tex. Crim. App. 1996)). The Court held that "the *Jackson v. Virginia* standard is the only standard that a reviewing court should apply in determining whether the evidence is sufficient to support each element of a criminal offense that the State is required to prove beyond a reasonable doubt." *Id.* at 912.

The jury determines the weight to give the testimony of witnesses, and the determination may turn on an evaluation of credibility. *See Cain v. State*, 958 S.W.2d 404, 408-09 (Tex. Crim. App. 1997).

“On appeal, the same standard of review is used for both circumstantial and direct evidence cases.” *Hooper*, 214 S.W.3d at 13. It is unnecessary for every fact to point directly and independently to the guilt of the accused; it is enough if the finding of guilt is warranted by the cumulative force of all the incriminating evidence. *Johnson v. State*, 871 S.W.2d 183, 186 (Tex. Crim. App. 1993). We review Goodrich’s first two issues using the *Jackson* standard to determine whether any rational trier of fact could have found the essential elements of the offense beyond a reasonable doubt. *Jackson*, 443 U.S. at 318-19.

The evidence proving Goodrich’s guilt is largely circumstantial. The evidence before the jury established that Goodrich had purchased drugs from Bogany on several occasions before Bogany was murdered. Approximately ten days before the murder, Goodrich and Bogany argued about a drug deal, and Goodrich told a friend that he was going to shoot Bogany. On the day before and the day of the murder, phones available to Goodrich were used to place telephone calls to Bogany’s cellular phone; on the day of the murder, Goodrich left a voicemail message requesting that Bogany call him. Although there were no witnesses who testified they saw the murder occur, or witnesses who saw Goodrich and Bogany together on the day of the murder, there was also additional circumstantial evidence that a meeting between Goodrich and Bogany occurred around

the time and at the scene of the murder. Additionally, a ballistics expert testified that shells found at the scene of the murder had been fired from the same gun as a shell from a gun known to have been in Goodrich's possession prior to Bogany's murder. After the murder, upon being initially questioned by a Texas Ranger, Goodrich denied that he knew Bogany, and denied having ever purchased drugs from him. In a subsequent interview, Goodrich admitted that he knew Bogany and admitted that he had purchased drugs from him on more than one occasion.

Goodrich argues in his brief that the evidence against him was "entirely circumstantial," as no one saw him shoot Bogany, and he contends there is "an innocent explanation" for each of the pieces of incriminating evidence. Nevertheless, "[c]ircumstantial evidence is as probative as direct evidence in establishing the guilt of an actor, and circumstantial evidence alone can be sufficient to establish guilt." *Hooper*, 214 S.W.3d at 13.

In this case, having reviewed the evidence in a favorable light to the jury's verdict, the State's circumstantial evidence allowed the jury to rationally conclude beyond reasonable doubt that Goodrich murdered Bogany. Specifically, given the evidence of Goodrich's relationship with Bogany, Goodrich's threat to shoot Bogany, their meeting on the day of the murder, and evidence tying a shell fired from a gun in Goodrich's possession before the murder to shells found at the scene of the murder, a rational jury could reasonably conclude beyond a reasonable doubt that Goodrich killed Bogany. We

hold that the evidence is sufficient to support Goodrich's conviction of murder. *See Brooks*, 323 S.W.3d at 894; *Jackson*, 443 U.S. at 319. We overrule Goodrich's first and second issues.

Admission of Evidence

In his third issue, Goodrich complains the trial court erred by admitting Goodrich's voicemail message to Bogany. Goodrich argues the State failed to properly authenticate Goodrich's recorded message.

We review a trial court's admission of evidence for an abuse of discretion. *Weatherred v. State*, 15 S.W.3d 540, 542 (Tex. Crim. App. 2000). A trial court does not abuse its discretion unless the trial court's evidentiary ruling falls outside the zone of reasonable disagreement. *Weatherred*, 15 S.W.3d at 542. Generally, a trial court abuses its discretion when it acts without reference to any guiding rules and principles or acts arbitrarily or unreasonably. *Montgomery v. State*, 810 S.W.2d 372, 380 (Tex. Crim. App. 1990).

Rule 901 of the Texas Rules of Evidence governs the authentication and admissibility of electronic recording evidence and provides that "[t]he requirement of authentication or identification as a condition precedent to admissibility is satisfied by evidence sufficient to support a finding that the matter in question is what its proponent claims." Tex. R. Evid. 901(a); *Angleton v. State*, 971 S.W.2d 65, 69 (Tex. Crim. App. 1998). Subsection (b) provides a nonexclusive list of examples of ways evidence can be

authenticated to conform to the requirements of Rule 901. Tex. R. Evid. 901(b). For example, evidence may be properly authenticated through the testimony of a witness with knowledge that a matter is what it is claimed to be. Tex. R. Evid. 901(b)(1). Another way a recording of a person's voice can be authenticated is "by opinion based upon hearing the voice at anytime under circumstances connecting it with the alleged speaker." Tex. R. Evid. 901(b)(5); *Thornton v. State*, 994 S.W.2d 845, 855 (Tex. App.—Fort Worth 1999, pet. ref'd). Additionally, the identity of a caller can be demonstrated by self-identification coupled with additional circumstances, such as the context and timing of the call, the contents of the statement, and disclosure of knowledge of facts known peculiarly to the speaker. Tex. R. Evid. 901(b)(4) (allowing the identification and authentication through distinctive characteristics, taken in conjunction with circumstances); *Manemann v. State*, 878 S.W.2d 334, 338 (Tex. App.—Austin 1994, pet. ref'd); *Wilson v. State*, 884 S.W.2d 904, 906 (Tex. App.—San Antonio 1994, no pet.).

Here, Ron Duff, a Texas Ranger, identified a computer disc and stated that it contained the recording of a voicemail from Goodrich to Bogany. Ranger Duff copied the voicemail after being given access to it by Goodrich's cellular-phone provider. Goodrich provided his home phone number during an interview with the police, and records from Goodrich's cellular-phone provider tied the voicemail at issue as originating from a call made from Goodrich's home phone. Additionally, the message identifies the caller as "Joe" and includes a request that the recipient call Goodrich's home number. Based on

the evidence authenticating the message, we conclude the trial court reasonably determined that the voicemail was authentic; therefore, the trial court did not abuse its discretion by admitting the voicemail message. *See Weatherred*, 15 S.W.3d at 542. We overrule Goodrich's third issue.

Fair and Impartial Jury Trial

In his fourth issue, Goodrich asserts he was denied a fair and impartial jury trial because jurors saw him placed in handcuffs outside the courtroom, and then escorted in handcuffs through the courthouse to a patrol vehicle outside. However, even were jurors to see a handcuffed defendant outside the courtroom, a momentary, inadvertent, and fortuitous encounter away from the courtroom between a handcuffed defendant and a juror does not necessarily call for a mistrial or reversal. *Hernandez v. State*, 805 S.W.2d 409, 415 (Tex. Crim. App. 1990) (holding that, even assuming jurors saw the defendant in shackles outside courtroom in the parking lot and the hall, trial court was not required to grant a mistrial).

During the guilt/innocence phase of the trial, the trial court held a hearing outside the presence of the jury on Goodrich's complaint that jurors had seen him handcuffed as he was escorted from the courtroom to jail during a lunch break. Goodrich testified that there were at least four jurors by the door in a position to have seen him being handcuffed while he was outside the courtroom doors. An officer involved in taking Goodrich to the car to be transported to jail testified that he ordered Goodrich to be placed in handcuffs at

the top of the stairs, that he did so because people are usually transported in handcuffs, and that he did not see anyone in the hall at that time. Photographs from the courthouse's security camera demonstrate that several people were located in the hallway at the same time that Goodrich was being taken to the patrol car parked outside, but there is no testimony identifying the persons depicted by the security cameras as jurors.

The record before us is insufficient to demonstrate that any juror actually saw Goodrich while he was in handcuffs. *See id.* Nonetheless, even assuming that some jurors saw Goodrich in handcuffs in the hall, he was outside the courtroom at that time; thus, “the encounter[, if any,] was momentary, inadvertent, fortuitous, and away from the courtroom.” *Id.* We overrule Goodrich's fourth issue.

Attorney's Fees

In Goodrich's fifth issue, he argues the final written judgment erroneously orders that he reimburse the State for paying his court-appointed attorney's fees. Goodrich maintains that because the trial court did not orally pronounce its assessment of attorney's fees at his sentencing hearing, the judgment should not include these fees.

The Austin Court of Appeals has held that the assessment of fees for a court-appointed attorney is not part of the defendant's punishment; therefore, fees need not be orally pronounced at sentencing. *Burke v. State*, 261 S.W.3d 438, 439 (Tex. App.—Austin 2008, no pet.); *Weir v. State*, 252 S.W.3d 85, 88 & n.2 (Tex. App.—Austin 2008), *rev'd on other grounds*, 278 S.W.3d 364 (Tex. Crim. App. 2009). The Court of Criminal

Appeals held in *Weir v. State*, that because court costs are not punitive, the costs do not have to be “included in the oral pronouncement of sentence . . . as a precondition to their inclusion in the trial court’s written judgment.” 278 S.W.3d at 367. The Texas Code of Criminal Procedure authorizes trial courts in certain circumstances to order a defendant to pay some or all of “the costs of the legal services provided . . . as court costs[.]” *See* Tex. Code Crim. Proc. Ann. art. 26.05(g) (West Supp. 2010).

We conclude that a trial court’s decision to require the defendant to reimburse the State for the amount it paid in attorney’s fees does not constitute part of the defendant’s punishment for having committed a crime. As a result, the trial court was not required to orally pronounce at sentencing its decision with respect to Goodrich’s reimbursing the State for paying his attorney’s fees. We overrule Goodrich’s fifth issue.

Conclusion

Having overruled all of Goodrich’s issues, we affirm the trial court’s judgment.

AFFIRMED.

HOLLIS HORTON
Justice

Submitted on March 1, 2011
Opinion Delivered April 13, 2011
Do Not Publish
Before Gaultney, Kreger, and Horton, JJ.