IN THE COURT OF CRIMINAL APPEALS OF TEXAS

NO. PD-0005-18

MARGARET FAYE LITCHFIELD, Appellant

v.

THE STATE OF TEXAS

ON APPELLANT'S PETITION FOR DISCRETIONARY REVIEW FROM THE SIXTH COURT OF APPEALS CORYELL COUNTY

WALKER, J., announced the judgment of the Court and delivered an opinion in which RICHARDSON and NEWELL, JJ., joined. KELLER, P.J., and KEASLER, HERVEY, YEARY, KEEL, and SLAUGHTER, JJ., concurred.

O P I N I O N

A Coryell County jury found Appellant, Margaret Faye Litchfield, guilty of the cold case murder of her husband, Raymond Litchfield, and the trial court sentenced Appellant to sixty years' confinement. On appeal, Appellant argued in her sole issue that the evidence was insufficient to support the jury's guilty verdict, but the court of appeals disagreed and affirmed the trial court's judgment, as modified. *Litchfield v. State*, No. 06-17-00007-CR, 2017 WL 5894314 (Tex. App.—Texarkana Nov. 30, 2017) (mem. op., not designated for publication). We affirm.

I — Sufficiency of the Evidence

In assessing the sufficiency of the evidence to support a criminal conviction, reviewing courts "consider all the evidence in the light most favorable to the verdict and determine whether, based on that evidence and reasonable inferences therefrom, a rational juror could have found the essential elements of the crime beyond a reasonable doubt." *Alfaro-Jimenez v. State*, 577 S.W.3d 240, 243–44 (Tex. Crim. App. 2019) (quoting *Hooper v. State*, 214 S.W.3d 9, 13 (Tex. Crim. App. 2007)); *Jackson v. Virginia*, 443 U.S. 307, 319 (1979). This standard requires the appellate court to defer "to the responsibility of the trier of fact fairly to resolve conflicts in the testimony, to weigh the evidence, and to draw reasonable inferences from basic facts to ultimate facts." *Zuniga v. State*, 551 S.W.3d 729, 732 (Tex. Crim. App. 2018) (quoting *Jackson*, 443 U.S. at 319). "[*A*]*ll of the evidence* is to be considered." *Jackson*, 443 U.S. at 319 (emphasis in original); *McDaniel v. Brown*, 558 U.S. 120, 131 (2010) ("a reviewing court must consider all of the evidence admitted at trial when considering a *Jackson* claim"). Thus, an argument that "direct and circumstantial evidence *against* the jury's verdict is ignored" in a proper *Jackson* sufficiency review "is a misstatement of the law. In a legal-sufficiency analysis, no evidence is 'ignored' because the standard requires a reviewing court to view *all* of the evidence in the light most favorable to the verdict." *Cary v. State*, 507 S.W.3d 750, 759 n.8 (Tex. Crim. App. 2016) (emphasis in original).[1] Each fact need not point

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[1] We acknowledge that at one point in time we stated that:

> [I]n Texas, we have applied *Jackson* in such a way that the only evidence a reviewing court considers is the evidence that supports the verdict . . . In practice, to the extent that reviewing courts look at all the evidence, they do so merely for the purpose of determining whether it supports the verdict. A reviewing court will ultimately disregard any evidence that does not support the verdict.

Clewis v. State, 922 S.W.2d 126, 132 n.10 (Tex. Crim. App. 1996), overruled by *Brooks v. State*, 323

directly and independently to guilt if the cumulative force of all incriminating circumstances is sufficient to support the conviction. *Nisbett v. State*, 552 S.W.3d 244, 262 (Tex. Crim. App. 2018) (citing *Hooper*, 214 S.W.3d at 13). It is not necessary that the evidence directly prove the defendant's guilt; circumstantial evidence is as probative as direct evidence in establishing a defendant's guilt, and circumstantial evidence can alone be sufficient to establish guilt. *Id.*

An appellate court cannot act as a thirteenth juror and make its own assessment of the evidence. *Id.*; *Moreno v. State*, 755 S.W.2d 866, 867 (Tex. Crim. App. 1988). Instead, the appellate court's role is restricted to guarding against the occurrence when the factfinder does not act rationally. *Nisbett*, 552 S.W.3d at 262; *Isassi v. State*, 330 S.W.3d 633, 638 (Tex. Crim. App. 2010). This rationality requirement is a key, explicit component of the *Jackson* sufficiency standard. *See Jackson*, 443 U.S. at 319 ("[T]he relevant question is whether, *after viewing* the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.") (emphasis added). As Judge Hervey explained in her dissenting opinion in *Watson*:

> The *Jackson v. Virginia* standard has two components. It requires the reviewing court to view the evidence in the light most favorable to the verdict, which means that the reviewing court defers to the jury's credibility and weight determinations apparently because the jury, having seen the witnesses testify, is in the best position to make these calls. The *Jackson v. Virginia* standard then requires the reviewing court to determine whether the jury's verdict is "rational" under the beyond a reasonable doubt standard.

Watson v. State, 204 S.W.3d 404, 418 n.7 (Tex. Crim. App. 2006) (Hervey, J., dissenting); *see also*

S.W.3d 893, 895 (Tex. Crim. App. 2010). We have since disavowed that notion. *Watson v. State*, 204 S.W.3d 404, 418 (Tex. Crim. App. 2006) (Hervey, J., dissenting). Nevertheless, the idea still occasionally rears its head. *See Cary*, 507 S.W.3d at 759 n.8 (in which the State raised the argument).

Brooks v. State, 323 S.W.3d 893, 902 n.19 (Tex. Crim. App. 2010) ("Viewing the evidence in the light most favorable to the verdict, however, begins the *Jackson v. Virginia* legal-sufficiency analysis.").

Thus, a reviewing court is not to hold that the verdict is supported by sufficient evidence by simply determining that there was evidence from which the jury could have found the elements of the offense. The *Jackson* standard "requires the reviewing court to consider *all* the evidence in the 'light most favorable to the verdict,' and then it requires the reviewing court to decide whether the jury's finding is 'rational.'" *Johnson v. State*, 23 S.W.3d 1, 15 (Tex. Crim. App. 2000) (McCormick, P.J., dissenting) (emphasis in original). In sum, when a review of the evidence in the light most favorable to the verdict reveals evidence that supports the verdict, if the jury's reliance on that evidence, as proof beyond a reasonable doubt, is nevertheless not rational in light of *all of the evidence*, then the verdict is not supported by legally sufficient evidence.[2]

Consequently, "[i]t is the obligation and responsibility of appellate courts 'to ensure that the evidence presented actually supports a conclusion that the defendant committed the crime that was charged.'" *Ross v. State*, 543 S.W.3d 227, 234 n.14 (Tex. Crim. App. 2018), and *Reynolds v. State*, 543 S.W.3d 235, 241 n.10 (Tex. Crim. App. 2018) (both quoting *Winfrey v. State*, 323 S.W.3d 875, 882 (Tex. Crim. App. 2010)); *Williams v. State*, 235 S.W.3d 742, 750 (Tex. Crim. App. 2007). Accordingly, juries are not permitted to come to conclusions based on "mere speculation or factually unsupported inferences or presumptions." *Braughton v. State*, 569 S.W.3d 592, 608 (Tex. Crim.

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[2] To the extent that any of our past opinions have variously rephrased the legal sufficiency standard in such a way that they did not emphasize that the evidence in the record must be sufficient for a rational jury to find guilt "beyond a reasonable doubt," as required by the Jackson standard, this was not our intention. Our intent in those cases was not to dispose of the requirement. Instead, our intent was only to avoid redundancy.

App. 2018) (quoting *Hooper*, 214 S.W.3d at 15–16). As we explained in *Hooper*:

> Under the *Jackson* test, we permit juries to draw multiple reasonable inferences as long as each inference is supported by the evidence presented at trial . . . [A]n inference is a conclusion reached by considering other facts and deducing a logical consequence from them. Speculation is mere theorizing or guessing about the possible meaning of facts and evidence presented. A conclusion reached by speculation may not be completely unreasonable, but it is not sufficiently based on facts or evidence to support a finding beyond a reasonable doubt.

Hooper, 214 S.W.3d at 15–16. If the evidence at trial raises only a suspicion of guilt, even a strong one, then that evidence is insufficient. *Urbano v. State*, 837 S.W.2d 114, 116 (Tex. Crim. App. 1992); *Winfrey v. State*, 393 S.W.3d 763, 769 (Tex. Crim. App. 2013). Similarly, motive is not enough to establish guilt of a crime. *Nisbett*, 552 S.W.3d at 265. And opportunity, when coupled with motive, is not sufficient to prove identity in a murder prosecution, even though motive and opportunity are circumstances indicative of guilt. *Id.*; *Temple v. State*, 390 S.W.3d 341, 360 (Tex. Crim. App. 2013).

A person commits the offense of murder if he or she 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). Appellant does not contest that her husband Raymond was murdered. Instead, Appellant's challenge is that the evidence presented to the jury does not establish that she was the person who caused Raymond's death.

II — Analysis

We have considered all of the evidence, which includes the facts as stated in the court of appeals's opinion. *See Litchfield*, 2017 WL 5894314 at *2–13 (comprehensively summarizing the evidence). In the end, although the court of appeals acknowledged that "some testimony may indeed

be speculative," *id.* at *1, it ultimately determined that the evidence was sufficient. In our review of the record, we agree that some of the testimony was speculative. Nevertheless, there is evidence of motive, evidence of opportunity, and a plethora of evidence relating to firearms and ammunition that points to a reasonable inference that Raymond Litchfield was killed with his own gun and that Appellant was the individual that shot him, and we conclude, as the court of appeals did, that the evidence is legally sufficient to support Appellant's conviction for murder.

The court of appeals concluded that evidence showed Appellant had a financial motive to kill Raymond, including evidence that Raymond was a good money manager who was "close with a dollar;" that Appellant made an expensive purchase on Raymond's credit card; and, according to postal worker McCue, that Appellant hid the purchase from Raymond by intercepting the mail. Raymond was planning on buying a boat, and he scheduled an appointment with the bank for the day before the murder. The jury heard evidence that Appellant frantically called the bank to push back the meeting because she did not want Raymond to learn about the charges she had made until she could discuss them with Raymond first. Appellant represented that she discussed those charges with Raymond. In her written statement, Appellant indicated that Raymond was not upset. However, Harmon heard that Raymond and Appellant had an argument over the purchase of the boat. Bobo testified that while Appellant reported that their financial situation improved in 1999, checks were regularly returned for insufficient funds before the murder. The court of appeals is correct that all of this evidence tends to show that Appellant had a motive to kill Raymond. Nevertheless, this evidence, which establishes motive, does little, if anything, to show that Appellant actually killed Raymond.

The court of appeals also found that Appellant had the opportunity to kill Raymond.

Appellant and Raymond were alone in their home that morning before Appellant left to go to the Woods' house. The court of appeals determined that, because the jury heard conflicting evidence regarding Raymond's time of death, the jury could have resolved that conflict by concluding that Raymond was shot before Appellant left the house at 6:30 AM. The court of appeals is correct that there was evidence that, when viewed in the light most favorable to the verdict, shows that Raymond was killed before Appellant left the house. But that does not end the sufficiency inquiry. An appellate court in its sufficiency analysis must look at all of the evidence, *Cary*, 507 S.W.3d at 759 n.8, to determine whether the jury's verdict is rational. *Blankenship*, 780 S.W.2d at 207.

All evidence relating to time of death must be considered. Medical examiner Crowns, in his testimony, explained that he was contacted by the Coryell County district attorney's office to look over the autopsy report by Guileyardo and the crime scene photographs and come up with a range for time of death based on those items. Crowns told the jury that a number of variables could affect an estimate for time of death, and environmental factors were very important to that determination. Crowns admitted, however, that he was provided with no such information from the prosecution. Crowns nevertheless gave a number of opinions as to the time of death. He first testified that the time of death was somewhere between 2:00 AM and 8:00 AM. Yet, later during direct examination, Crowns said the range was roughly between six to eighteen hours before Raymond was discovered. This time frame would put the time of death somewhere between 8:00 PM the previous night and 8:00 AM. The prosecutor for the State asked Crowns to narrow this range further, and Crowns put the time of death somewhere between eight and twelve hours before discovery. This time frame would put the time of death somewhere between 2:00 AM and 6:00 AM. On cross-examination, Crowns admitted that he made a number of assumptions about the conditions in the house and his

time frames were based upon generalities. He explained that the generalities were published under ideal circumstances with cadavers in a controlled environment, yet "no one dies under ideal circumstances." He also admitted that he made no written report. Viewed in the light most favorable to the verdict, although Crowns equivocated and conceded that it was possible that Raymond's time of death occurred later in the morning, he provided a number of ranges for the time of death which include times in which Raymond died before Appellant left the house.

Other evidence from which Raymond's time of death can be inferred includes Battreal's testimony that he was going to accompany Raymond to see a boat and possibly test out or go fishing with the boat. Because Raymond never arrived to pick up Battreal, Battreal called Raymond, who did not answer his phone. Battreal left a voice mail. According to Helms, Battreal told him that the phone call was around 9:15 AM. Battreal's unanswered call and voice mail can be construed as evidence that Raymond died before the call at 9:15 AM.

Appellant, in her statements, said that Raymond was alive when she left the house at 6:30 AM. Evidence supporting Appellant's assertion came from Polidoro, the paramedic who responded to the scene and actually saw Raymond's body where he died. She estimated that Raymond died around five to six hours before she saw the body, putting the time of death somewhere between 8:00 AM and 9:00 AM, which would be after Appellant left the house.

Guileyardo, the medical examiner who performed the autopsy, explained in his testimony that determining a time of death was difficult due to the great number of variables that would impact the time. On direct examination, Guileyardo agreed that rigor can set in somewhere between six to eight hours in normal cases, but he added that the six to eight hour frame for rigor was just one of the estimates in general textbooks. Guileyardo stated that, instead of indicating that a person has been

dead for several hours, evidence of rigor would indicate that a person has been dead at least "a few hours." Guileyardo cautioned that there is no precise determination of how long it takes for rigor to become fixed and that although rigor does, in fact, become fixed after several hours, rigor does not necessarily take several hours to become fixed. At the low end of the range, rigor may not take several hours. Guileyardo's testimony allows for the possibility that Raymond died before Appellant left the house and also the possibility that Raymond died after Appellant left the house.

The court of appeals noted that there was evidence that there was no sign of a forced entry, whereas Appellant told Helms she and Raymond "did not usually lock the house." *Id.* at *5. The court of appeals also noted that there was evidence that the dogs, who were known to bark at strangers, were outside of the gate which was open before 6:30 AM, but the dogs were inside the gate, which was closed, at 11:30 AM. The fact that the gate was open at 6:30 AM is consistent with Appellant's version of events, that Raymond told her to leave the gate open because he was expecting company later that day. Accordingly, there was, as the court of appeals found, conflicting evidence regarding Raymond's time of death.

The second step of *Jackson* sufficiency analysis asks whether the verdict is rational under the beyond a reasonable doubt standard in light of all of the evidence. In order to complete the sufficiency analysis, the court of appeals should have considered whether the medical experts' opinions themselves were adequately supported and, therefore, reliable. Whether the jury was rational in favoring Crowns's expert opinion over Guileyardo's expert opinion, assuming the jury did so,[3] turns on the reliability of Crowns's expert witness testimony. Even in the absence of an

[3] While a reasonable reading of the record supports a conclusion that the jury favored Crowns's expert opinion over Guileyardo's expert opinion, an alternative, plausible reading of the record is that the jury recognized that Guileyardo's testimony was that a time of death could not be

express challenge to the reliability of expert testimony, a reviewing court may take the reliability of that testimony into account in conducting a legal sufficiency analysis. Reliability is important on sufficiency review because a rational jury could not find a defendant guilty beyond a reasonable doubt based on unreliable expert testimony. To do so would be irrational.

We have previously considered the reliability of expert witness opinions when considering whether the evidence to support a verdict is legally sufficient. For example, in *Winfrey*, the State's evidence included a dog scent-discrimination lineup that found the defendant's scent on the murder victim's clothes. *Winfrey*, 323 S.W.3d at 881. After considering the science of dog scent-discrimination lineups, we concluded that such evidence is legally insufficient to support a conviction when used alone or as primary evidence. *Id.* at 884.

Of course, the theory and methodology may themselves be reliable in the abstract, but an expert's opinion, even though employing the theory and methodology, may be unreliable in a particular case because the expert reached his conclusions in an unreliable way. We explained in *Kelly v. State* that, "[a]s a matter of common sense, evidence derived from a scientific theory, to be considered reliable, must satisfy three criteria in any particular case: (a) the underlying scientific theory must be valid; (b) the technique applying the theory must be valid; and (c) the technique must have been properly applied on the occasion in question." *Kelly v. State*, 824 S.W.2d 568, 573 (Tex. Crim. App. 1992); *Jenkins v. State*, 493 S.W.3d 583, 602 (Tex. Crim. App. 2016).

Accordingly, whereas in *Winfrey* we found the evidence insufficient because the verdict was supported by scientific evidence that was unreliable in its methodology, scientific evidence

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precisely determined but that Raymond could have died before Appellant left the house at 6:30 AM. They did not necessarily favor Crowns's testimony over the testimony of Guileyardo.

supporting a verdict is legally insufficient where it is unreliable because it is based upon an improper application of the science. Consistent with our sister Court's precedent,[4] we put less probative weight upon conclusions by scientists whose opinions may be scientifically inaccurate despite their reliance upon sound science and methodology.

Thus, while the science and methodology behind determining time of death in the abstract may be reliable, it appears that Crowns's conclusion about Raymond's time of death in this case may

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[4] Recently, the Supreme Court of Texas reaffirmed that, in civil cases, "a determination of scientific reliability is appropriate in reviewing the legal sufficiency of evidence." *Gunn v. McCoy*, 554 S.W.3d 645, 661 (Tex. 2018) (quoting *Merck & Co. v. Garza*, 347 S.W.3d 256, 262 (Tex. 2011)). "[I]f an expert's opinion is based on certain assumptions about the facts, [reviewing courts in civil cases] must consider evidence showing those assumptions were unfounded." *Id.* at 662 (citing *City of Keller v. Wilson*, 168 S.W.3d 802, 813 (Tex. 2005)). "Thus, 'if no basis for the opinion is offered, or the basis offered provides no support, the opinion is merely a conclusory statement and cannot be considered probative evidence, regardless of whether there is no objection.'" *Id.* (quoting *Hous. Unlimited, Inc. Metal Processing v. Mel Acres Ranch*, 443 S.W.3d 820, 829 (Tex. 2014)).

For examples of cases in which our sister Court has found evidence legally insufficient to support the verdict because the evidence consisted of unfounded expert opinions, *see Merrell Dow Pharms., Inc. v. Havner*, 953 S.W.2d 706, 730 (Tex. 1997) (evidence legally insufficient to establish that child's birth defect was caused by morning sickness drug where the expert's opinion was unreliable because it was based on studies concluding the opposite, it relied on opinions of other expert witnesses whose own opinions were not reliable, and the expert identified no other study or body of knowledge that would support his opinion other than the chemical structure of one of the drug's components and a study done on antihistamines); *Coastal Transp. Co. v. Crown Cent. Petroleum Corp.*, 136 S.W.3d 227, 234–35 (Tex. 2004) (evidence legally insufficient to show defendant's actual, subjective awareness of the risk necessary to establish gross negligence, where expert's opinion speculated that defendant followed general industry practice); *Volkswagen of Am., Inc. v. Ramirez*, 159 S.W.3d 897, 911–12 (Tex. 2004) (evidence legally insufficient to establish that accident was caused by allegedly defective wheel assembly, where expert's opinion was unreliable because the expert pointed to no data that indicated that the defect caused the driver to lose control; there were no tests, skid marks, or other physical evidence to support the opinion; and the expert did not explain how the wheel stayed in the wheel well as the car traveled through the median and collided with the other driver); *Hous. Unlimited, Inc. Metal Processing*, 443 S.W.3d at 838 (evidence legally insufficient to support lost market value of plaintiff's land due to stigma of previous contamination by defendant, where expert's opinion was unreliable because it was conclusory due to its reliance upon insufficient data, unsupported assumptions, and analytical gaps).

not have been. Even though Crowns explained the importance of environmental conditions to determining time of death, Crowns did not know the environmental conditions of the Litchfield house where Raymond's body was found. Instead, Crowns relied upon a number of assumptions to give an opinion on the time of Raymond's death. Crowns's conclusion was lacking factual support and appears to be at least somewhat speculative.

However, even considering Crowns's admissions that his estimate as to Raymond's time of death was based on generalities and assumptions, his testimony still allowed for the possibility that Raymond died after 6:30 AM and before 8:00 AM, when Appellant asserted that she left the home around 6:30 AM. Although Polidoro estimated Raymond died between 8:00 AM and 9:00 AM, Guileyardo testified that time of death could not be determined, and he declined to give an opinion as to time of death. However, even if we determined that Crowns's opinions as to time of death were completely unreliable and should be ignored in the analysis, compelling firearms evidence, which we will discuss shortly, was presented that provided a reasonable inference that Appellant shot Raymond with his own weapon.

Viewed in the light most favorable to the verdict, the evidence is sufficient to show that she had motive and opportunity. By itself, motive is not enough to establish guilt of a crime, and opportunity, when coupled with motive, is not sufficient to prove identity in a murder prosecution. *Nisbett*, 552 S.W.3d at 265. However, in this case there is more than evidence of motive and opportunity—there is compelling circumstantial evidence that supports an inference that Raymond's gun was the murder weapon and that Appellant used it.

The most compelling evidence that supports an inference that Appellant killed Raymond is the testimony of Forensic scientist Robert Poole. He testified that the two bullets recovered in the

autopsy were .22 caliber PMC brand and Federal brand.[5] He further testified that there was a box of mixed .22 caliber ammunition that was found in Raymond's gun cabinet, and the box contained both PMC and Federal brand cartridges.[6] Furthermore, the only missing weapon from the home was Raymond's .22 caliber Ruger Mark I pistol, and Appellant knew where Raymond kept that pistol. It is also worth noting that State's Exhibit 32 is a photograph of Raymond's gun cabinet containing several long guns, one of which appears to be a pump action .22 caliber rifle.

Of course, because the murder weapon was never definitively identified, there was no evidence conclusively establishing that the gun that was used to shoot Raymond was, in fact, his own gun. Helms testified:

> Q. [by Defense Counsel] Do you know if the weapon that shot and killed Mr. Raymond Litchfield was in fact his own weapon or not?
>
> A. [by Helms] Not definitely, no.
>
> Q. Okay. If you were to tell this jury that that was his weapon that shot him, we would be speculating; is that correct?
>
> A. That's correct.
>
> . . .
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> Q. What hard evidence do you have, not only in your report, but in anybody's report that you can show to this jury that tells you it was Mr. Litchfield's weapon that he was shot with in January 29, 1999?
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> A. We have no evidence linking that gun to that shooting.

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[5] The court of appeals, in its opinion, only noted that Raymond was shot with PMC brand .22 caliber bullets.

[6] Poole explained that the box that was found was a half-full Federal brand cartridge box. Poole noted that the box contained at least four different brands of cartridges, including Remington, PMC, CCI, and Federal, but he did not take each and every cartridge out of the box.

> Q. So you leave the possibility open it could have been any type of .22 or any other person's .22?
>
> A. Correct.

Rep. R. vol. 12, 234, 235–36. Forensic scientist Robert Poole determined that a Ruger Mark I could have, based on the characteristics of the bullets recovered from Raymond's body in the autopsy, fired the bullets. But Poole could not conclusively say that a Ruger fired the bullets; the bullets could have been fired from 728 different models of .22 caliber firearms,[7] encompassing, according to his report, 71 brands. Poole could not confirm that the bullets were fired from the same gun, and he could not conclude that they were fired from only one gun as opposed to two guns.

Additionally, there was no physical evidence definitively establishing that the person who fired the gun was Appellant. Further compounding the problem, the testimony given at trial about the actual shooting itself is entirely speculative. The court of appeals's own opinion laid this out clearly:

> Bevel said that all of the information provided to him still did not reveal who pulled the trigger or what weapon was used to commit the murder. Yet, he testified,
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> > What we can say is that if the weapon is being retrieved from the table next to the bed, it would likely be somebody who would know that the weapon was there. But, again, we have to be careful. We don't know that it was retrieved contiguous to this incident or could it have been a day or a week before, we don't know. But it would appear that somebody would have knowledge of where it was kept.
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> Although Bevel could not conclude why Raymond hit his heel on the sheetrock, and Helms had concluded that Raymond was in the process of picking himself up off the hallway floor when he hit the sheetrock, former Texas Ranger John Aycock claimed he "saw evidence of potentially of talking to the shooter." Aycock continued,
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> > I put myself in his position. If I were awakened in my bedroom in my bed,

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[7] Four Ruger Mark I models were among the 728 possible guns.

> somebody be shooting me and I didn't have a way to defend myself handy, I would have got out of that place quick as I could, find me something, a lamp, anything. But with him, he was backing out of the bedroom, and it didn't compute with me that he was backing out instead of running out full-bore unless he knew who was shooting him. And when I thought that process in my mind, it clicked, made sense . . . . If it be me, I would be running out of that place.

Bobo also opined that Raymond's .22 was used to kill him and believed that Margaret picked up the gun from the nightstand and shot him. He testified,

> To believe that somebody would come into another man's house in the middle of the night or early morning hours, unarmed, wanting to take another man's life, hoping that he's got a firearm by the bed so you can kill him, so you pick up the firearm, you walk on the other side of the bed, the opposite side and shoot a man while he's by all indications asleep in the bed. That's—I've worked many murders. I've never seen anything like that, ever.

It appears that Bobo had not considered the possibility that someone could have entered the home with their weapon and had simply stolen Raymond's gun.

Litchfield, 2017 WL 5894314 at *12–13. Also, as the court of appeals noted, other witnesses cautioned against a conclusion that Raymond was talking to his killer:

> Guileyardo testified that the evidence could not reveal whether Raymond was talking to the shooter and that such testimony *would also constitute speculation*.[8] Helms

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[8] On cross-examination, defense counsel asked Guileyardo:

> Q. [by Defense Counsel] . . . Can you determine through your analysis and review after a person is shot and moving about through a struggle or not, whether they're talking to somebody?
>
> A. [by Guileyardo] No.
>
> . . .
>
> Q. But if I were to tell you that the shooter was talking to the victim that would be pure speculation?
>
> A. From the autopsy?

concurred that there was no evidence that Raymond was talking to the shooter.[9]

Id. at *13 (emphasis added). The evidence presented to the jury by these witnesses about what occurred in the Litchfield house at the time Raymond was killed could not be anything but speculative. If this speculative testimony was the extent of the evidence, to go from this speculation to the conclusion that the person who shot Raymond was Appellant using Raymond's own gun, the jury had to stack speculation upon speculation about the possible meaning of the evidence. After all, Raymond's pistol was never identified and there was no ballistics tests that linked Raymond's pistol to the murder.

Q. Yeah.

A. Yes.

Rep. R. vol. 11, 200–01.

[9] On cross-examination, defense counsel asked Helms:

Q. [by Defense Counsel] What evidence do you have that shows that Raymond Litchfield was talking to the shooter during the course of the shooting?

A. [by Helms] Was talking to the shooter?

Q. Yes.

A. I don't have any evidence of that.

Q. That would be ridiculous to say that, wouldn't it? Unless you had an eyewitness?

A. That's correct, yeah.

Q. What evidence do you have to tell this jury that Raymond Litchfield knew the shooter?

A. None whatsoever.

Rep. R. vol. 12, 190–91.

However, while there were no ballistics tests which would have helped establish whether or not Raymond's gun was the murder weapon, other evidence remained: the loaded Ruger pistol magazines in the nightstand, the bullets recovered in the autopsy, the cartridge casings recovered from the bedroom floor, and the box of assorted ammunition. These pieces of evidence, considered together, lead to an inference that Appellant shot Raymond with his own gun.

First, there is significance in the loaded magazines. Although Poole agreed on cross-examination that it was possible for Raymond to have gotten rid of the pistol without getting rid of the magazines, the jury was not required to conclude that such was the case. It was merely a possibility and not a certainty. Instead, the jury could infer that, because the loaded magazines were still in the nightstand, Raymond still possessed the Ruger pistol up until his death. Because of the fact that Raymond usually kept the Ruger pistol and the Ruger magazines together in the nightstand, it stands to reason that, if Raymond had sold or otherwise disposed of the pistol, he would have, at the same time, sold or otherwise disposed of the extra magazines. Thus, because Raymond still had the magazines, it is reasonable to infer that Raymond still had the pistol.

According to Appellant's 1999 written statement, Raymond either kept the gun in the door pocket of his truck or inside of the top drawer of the nightstand, so that their "grandbaby" would not have access to the gun. She further asserted that if the gun was placed on top of the nightstand it was only left there momentarily. If it is reasonable to infer that Raymond still had the pistol, it is also reasonable to infer that the pistol was inside the top drawer of the nightstand. While it is not impossible that the murderer shot Raymond with their own gun before searching the nightstand and then stealing the pistol, it would appear to be highly unlikely. What are the odds that the unknown killer's pistol had the same two brands of .22 caliber ammunition that was recovered from

Raymond's body? A rational jury could infer that Appellant, who knew that the pistol was kept in the nightstand, took the gun and shot Raymond with it.

Then there is the matter of the bullets, cartridge casings, and cartridges. Again, Poole identified the bullets recovered from the autopsy as PMC and Federal brand. He identified the cartridge casings that were found on the bedroom floor as PMC and Federal brand. Poole also identified the cartridges that were loaded in the orphan Ruger magazines as Federal brand. Finally, although Poole did not examine every cartridge in the assorted box of ammunition, he identified Federal, PMC, Remington, and CCI brand .22 caliber cartridges. The fact that the bullets recovered in the autopsy were consistent with the unfired cartridges in the loaded magazines, the spent cartridge casings, as well as the assorted cartridges in the box of ammunition lends further credence to a conclusion that Raymond's gun, which contained a magazine matching the two orphaned magazines and loaded with cartridges consistent with those magazines and the box of ammunition from which Raymond would have loaded all three magazines, was the murder weapon.

Because of the usually hidden location, known to Appellant, of Raymond's gun, the orphan pistol magazines suggesting that the pistol was not disposed of by Raymond, and the commonality between the fired bullets recovered in the autopsy, the fired cartridge casings, the unfired cartridges loaded in the orphan pistol magazines, and the assorted box of .22 caliber cartridges, a rational jury could infer that Raymond's gun was present, Raymond's gun was the murder weapon, and Appellant was the person who used it.

This inference is also supported by unaccounted for time in Appellant's version of events. The court of appeals pointed out that, although Appellant maintained that she left the house at 6:30 AM and went straight to the Woods' residence, the jury heard testimony from Bobo and Helms that

the travel time was no longer than forty-five minutes, yet Appellant did not reach the Woods' residence until 8:00 AM. The unaccounted-for time—approximately forty-five minutes—is not evidence indicative of guilt if considered in a vacuum. Indeed, there was no evidence of what happened during the unaccounted-for time, and any conclusion the jury could draw from the lost time is speculation. But a certain amount of speculation is not forbidden, if the sufficiency of the evidence to support the conviction does not turn upon the speculation. Here, there is the fact that the firearms evidence was enough to create a reasonable inference that Appellant killed Raymond with his own gun. This is consistent with the idea, although speculative, that Appellant may have used the unaccounted-for time to find a place to dispose of the weapon.

II(A) — On Inconsistencies in Appellant's Version of Events

The court of appeals also considered evidence showing that Appellant's version of events was inconsistent or conflicting.

The court of appeals noted that, after Appellant left the Woods' house, she visited with her friend Hammack and was consequently late to an appointment at the Benny Boyd dealership. There was also evidence that Hammack did not want to talk to Burks. These pieces of evidence are not supportive of guilt. They only show that Appellant visited Hammack and Hammack did not want to talk to Burks. Asking the questions of "Why did she visit Hammack?" and "Why did Hammack refuse to talk?" only leads to speculation.

The court of appeals pointed out that Appellant said in her statement that Hammack called her around 5:00 AM that morning with concerns that, because it was raining, the creek could possibly rise. The court of appeals also pointed to Bobo's testimony that the rainfall was minimal. Whether the creek was truly in danger of flooding or not is off-the-mark and has no impact upon

Appellant's version of events. The issue is whether Hammack called. Hammack could have grossly overestimated the rainfall and flood potential, but that does not negate Appellant's statement that Hammack made the call.

Another factor the court of appeals identifies is that the home phone records did not show a 5:00 AM phone call from Hammack. The court of appeals seems to find significance in this fact, probably based on a line of thinking that if Appellant was telling the truth and Hammack actually called, then the phone records would show that call. Then, because the home phone records do not show a 5:00 AM call from Hammack, Appellant lied about the call. This is not an unreasonable line of thinking. However, our own review of the home phone records shows that while the records indeed do not show a 5:00 AM call from Hammack, the home phone records do not show any call information at all. The home phone records include only overall usage and billing information and no information regarding individual calls made or received. The lack of a record of a 5:00 AM phone call on the home phone records does not cast doubt upon Appellant's version of events.

Similarly, the court of appeals pointed to inconsistencies regarding whether Appellant and Raymond had coffee that morning. In her statement shortly after the murder, Appellant represented that she and Raymond had coffee that morning. According to Bobo, Appellant told the grand jury that neither she nor Raymond drank coffee at home. While this is inconsistent with Appellant's earlier statement, we find that this inconsistency only has value as impeachment evidence and not as inculpatory evidence.[10] Furthermore, in our own review of photographs of the kitchen, which were

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[10] Inculpatory evidence—evidence that is probative of guilt—is not necessarily impeaching. For example, evidence that the defendant punched the complainant in an assault case tends to prove that he committed the offense of assault, but it does not, of its own force, tend to prove that his testimony or statements are unworthy of belief. This is especially so if the defendant admitted the assault (but perhaps claims it was in self defense).

admitted into evidence, we observe that there is a coffee maker in the kitchen, which lends credence to her statement that Appellant and Raymond actually did drink coffee at home. It is certainly conceivable, given the passage of several years between the murder and her grand jury testimony, that Appellant may have forgotten about the coffee.

The evidence showing inconsistencies in Appellant's version of events serves to cast doubt on her version of events and is thus impeaching. While impeachment evidence can reach to the level of being evidence indicative of guilt, the impeachment evidence in the record before us does not appear to do so. This impeachment evidence certainly does not prove Appellant's guilt beyond a reasonable doubt. Assuming, for the sake of argument, that Appellant was wholly impeached and she totally lacked credibility, the State managed to prove that Appellant was not truthful. But Appellant was not on trial for being untruthful, she was on trial for murder.

III — Conclusion

After reviewing all of the evidence presented at trial in the requisite light most favorable to the guilty verdict, we hold that the evidence supports a rational jury conclusion that Appellant was the person who murdered Raymond and is therefore sufficient to support her conviction. Accordingly, we overrule Appellant's sole ground for review. Because the evidence was legally

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Similarly, impeachment evidence—evidence that indicates that the witness is not credible—is not necessarily inculpatory. For example, testimony by the defendant's mother that she loves her son and would do anything to help him is impeaching as to the mother, because the argument could be made that his mother would color her testimony to convince the jury to acquit. Yet evidence that his mother loves him and would do anything to help him has no probative value to a question of whether the defendant committed the assault in the first place.

Of course, evidence can be both impeaching and inculpatory. For instance, if the defendant claimed that he was not at the crime scene, evidence showing that he was there would be impeaching because it would show that he was being untruthful, and it would be inculpatory because it would show that he was there and thus probably involved with the crime.

sufficient, we affirm the judgment of the court of appeals.

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