COURT OF APPEALS
EIGHTH DISTRICT OF TEXAS
EL PASO, TEXAS

CORNELIUS DEWAYNE HARRISON, JR.,	§	No. 08-19-00140-CR
Appellant,	§	Appeal from the
v.	§	41st Judicial District
THE STATE OF TEXAS,	§	of El Paso County, Texas
Appellee.	§	(TC# 20180D00449)

O P I N I O N

Appellant Cornelius Dewayne Harrison, Jr. appeals his conviction of murder TEX.PENAL CODE ANN. § 19.02(c). In two issues, Appellant asserts trial court error and seeks reversal. In Issue One, Appellant challenges the admission of a photograph and a video that depicts the victim's body. In Issue Two, he challenges the trial court's denial to include an accomplice-witness instruction in the jury charge. We affirm.

BACKGROUND

Factual Background

The victim died of four fatal gunshot wounds to his head and torso. The murder occurred on January 3, 2018, near Red Sands in El Paso, Texas. The body of the victim was discovered by Ricardo Miranda, who was driving home and saw what appeared to be a mannequin in the street.

Upon approaching, Miranda realized it was a dead body and called 911. The victim was later identified as Frank Hernandez.

The day after the victim's body was discovered, Quinton Whitfield ("Whitfield") came forward and provided the El Paso Sheriff's Department with information about the murder. Based on the investigation that followed, it was confirmed that Appellant, Whitfield, Tortius Taft ("Taft"), Kyle Jones ("Jones"), and the victim, all traveled to Red Sands in the same vehicle on the evening of the murder.

The Investigation & Evidence

Carlos Cervantes, a crime scene investigator for the El Paso County Sheriff's Office, arrived on scene the night the victim's body was discovered. Cervantes photographed the scene and found two casings and several cigarette buds. He later assisted the sheriff's department in executing a search warrant at Appellant's apartment. During the search, a jacket was found containing a gun and two magazines. A black box located on a table contained a cell phone and wallet where a social security card was found inside. A laptop was found on another table, and Cervantes also found a pair of shoes, a black jacket, magazines with bullets, and a rifle.

Jeff Kelly, a forensic scientist in the firearms and toolmark section at the Texas Department of Public Safety Crime Lab, testified at trial. Kelly determined the casings recovered from the murder scene were fired from the rifle found at Appellant's apartment. Two bullets and one copper jacket fragment collected during the autopsy were affirmatively traced back to the same firearm. Out of the five pieces submitted, three fragments matched the rifle, and the other two fragments were unsuitable for lack of visible characteristics of comparison.

Cathey Serrano, a Texas Department of Public Safety DNA forensic scientist, tested items found at the murder scene and prepared a report. In regard to the cigarette buds found on scene,

she concluded Whitfield and Jones could not be excluded as contributors. Genesis Villa, also an El Paso County Sheriff's crime scene investigator, collected items from the autopsy—a DNA card of the victim, and bullet fragments extracted from the victim's body. Villa also collected a buccal swab from Whitfield. On cross-examination, Villa testified she had no knowledge of who fired the bullets. No fingerprints were recovered from the murder weapon.

Janice Diaz-Cavalliery, deputy medical examiner, testified about the autopsy findings. Diaz determined the victim was shot at close range and died of multiple gunshot wounds to the head and torso.

A search warrant resulted in the seizure of Appellant's phone, and James Vitale, an internet intelligence research specialist, testified to his findings regarding Appellant's Google searches. Appellant Googled whether AR-15 bullets were traceable, and on the day after the murder, Appellant searched for news reports for a body that may have been found in El Paso. John Holman, a soldier stationed at Fort Bliss with Appellant, testified he sold a rifle to Appellant and identified the rifle admitted into evidence as the one he sold to Appellant.

After Whitfield came forward with information about the murder, Detective Victor Cordero with the Sheriff's Department interviewed him. The interview was captured on video and published to the jury. Whitfield was never arrested, but Appellant was arrested after the interview, as were Jones and Taft.

Whitfield's Testimony

Whitfield testified he was merely a witness. He was stationed at Fort Bliss where Jones introduced him to Appellant and Taft. Whitfield testified he met Appellant in 2017 and spent time with Jones, Taft, and the victim almost daily.

On the day of the murder, Whitfield and Taft arrived at Appellant's apartment, where the

victim, Jones, and Appellant's wife were. Appellant asked to borrow Whitfield's car to go to Red Sands to shoot his gun, but Whitfield refused and instead offered to drive him. Whitfield, Appellant, Jones, Taft, and the victim all rode in the car. Whitfield had previously seen Appellant's rifle at Appellant's apartment when Jones showed it to him and knew the rifle belonged to Appellant. Appellant put that same rifle in the trunk of Whitfield's car before they departed to Red Sands.

Appellant guided Whitfield to the location and decided where to stop. Appellant said he was lost and got out of the car. Whitfield then turned the car lights off, everyone got out of the car, and Appellant retrieved the rifle from the trunk. Whitfield was smoking a cigarette when he heard Appellant tell the victim, "Get on your knees. I know you've been stealing from us." While the victim pled he had not stolen anything, Appellant shot the victim. Once he heard the first shot, Whitfield turned around and saw Appellant standing close to the victim and the others running toward the car. Whitfield heard Appellant shoot the victim a total of four to five times in quick succession.

Appellant then told everyone to get in the car and go. As they left, Appellant instructed Whitfield to "hit the lights and make a U-turn." As they passed the victim, they saw he was motionless. Whitfield testified he did not know the victim would be shot and learned in the car that Jones was supposed to have shot the victim, but got nervous. Appellant said he got tired of waiting so he shot the victim.

While still in the car, Jones realized he dropped his cigarette at the crime scene and told the group they needed to go back to get it. Appellant told Jones he was a Mason, and based on his beliefs, Jones should be shot in the back of the head for making the mistake of leaving his cigarette and owed Appellant a life. The group drove back to the murder scene and Jones and Taft got out

of the car to look for the cigarette. Appellant still had the rifle in his hands and only got out of the car because Jones and Taft were taking too long. Jones was unable to find the cigarette, but picked up a few shell casings.

After they left the crime scene, Appellant asked if anyone was hungry, and the group decided to go to a Whataburger near Appellant's apartment. The drive from the murder scene to Whataburger took about twenty minutes. After Whataburger, Appellant and Jones went inside of a Walgreens, but Whitfield did not know what for. The group then went back to Appellant's apartment. Jones and Taft gathered the group's clothes, the victim's phone and wallet, and threw everything in a garbage bag. Everyone slept at Appellant's apartment that night. The next morning, Whitfield left by himself and went to work. Later that day, after talking to his mother and a chaplain, Whitfield told the sheriff's department about the murder.

Appellant's Video Interview

Appellant was interviewed after he waived his *Miranda* rights and first stated he went out for drinks and food with his wife and Jones on the night of the murder. Appellant then claimed the victim later showed up at his apartment and though Appellant did not know him well, he offered the victim a place to stay. According to Appellant, he did not know the victim had been killed and figured the victim was killed because he had committed a robbery. Appellant also claimed his phone died the night of the murder and said he did not know Whitfield.

After the detectives told Appellant they knew he was lying, Appellant admitted he lied about going to eat. He claimed he did not shoot anyone and was not present for any shooting, but said the rifle belonged to Jones and it was Jones who committed the murder. He then changed his story, admitted he was present at the shooting, but said he stayed in the car when Jones shot the victim about four times.

Appellant revealed more and claimed everyone was at Appellant's house "hanging out" before the murder. Appellant said he lied to authorities to protect his friend, Jones. Later in the interview, Appellant said Whitfield was a peaceful person who was scared, crying, and did not know what was happening on the evening of the murder. Appellant eventually admitted to going back to the crime scene after the shooting and admitted the murder weapon belonged to him and was at his house.

Procedural History

Appellant was indicted of murder. TEX.PENAL CODE ANN. § 19.02(c). Following a trial, the jury returned a guilty verdict and assessed punishment at confinement by the Texas Department of Criminal Justice for a term of eighty-five years. This appeal followed.

DISCUSSION

Issues

Appellant appeals his conviction of murder. TEX.PENAL CODE ANN. § 19.02(c). In two issues, Appellant challenges his conviction on grounds the trial court erred in admitting certain evidence, and for the trial court's refusal to include an accomplice-witness instruction in the jury charge.

ADMISSIBILITY CHALLENGES

In his first issue on appeal, Appellant asserts the trial court erred when it admitted State's Exhibit Nos. 10 and 30. He asserts the exhibits, which both depicted the victim's head, blood, and brain matter, were gruesome and did not contribute to the resolution of any factual issue. Appellant argues the exhibits were cumulative and the prejudicial effect of them substantially outweighed any probative value. We disagree.

Standard of Review & Applicable Law

Generally, photographs and video recordings of crime scenes are admissible. *Huffman v. State*, 746 S.W.2d 212, 221 (Tex.Crim.App. 1988)(en banc). The trial court has sound discretion to admit photographic evidence over an objection. *Williams v. State*, 301 S.W.3d 675, 690 (Tex.Crim.App. 2009). Photographs must have probative value, and the probative value must not be substantially outweighed by its inflammatory nature. TEX.R.EVID. 403; *Williams*, 301 S.W.3d at 690. Photographic evidence is relevant if it has "any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." *See Penry v. State*, 903 S.W.2d 715, 751 (Tex.Crim.App. 1995); TEX.R.EVID. 401. Videos may be more helpful to a jury than photographs because recordings give the jury a more panoramic representation of physical and forensic evidence. *Gordon v. State*, 784 S.W.2d 410, 412 (Tex.Crim.App. 1990).

The admission of photographs and videos are reviewed for an abuse of discretion. *Penry*, 903 S.W.2d at 751. In evaluating whether a trial court abused its discretion, our review is limited to determining whether the probative value of the photograph or video is substantially outweighed by the danger of unfair prejudice, confusion of the issues, misleading the jury, or by consideration of undue delay or needless presentation of cumulative evidence. *Young v. State*, 283 S.W.3d 854, 874 (Tex.Crim.App. 2009). Relevant factors in determining whether the probative value is substantially outweighed by the danger of unfair prejudice include the number of exhibits, their gruesomeness, their size and detail, whether they are close-up, the availability of other means of proof, and the unique circumstances of each case. *See Fields v. State*, 515 S.W.3d 47, 56 (Tex.App.—San Antonio 2016, no pet.)(*citing Young*, 283 S.W.3d at 874).

Analysis

Appellant argues the video and photograph, specifically the "detailed, almost lingering

video image of [the victim's] brain spilled out on the ground" did not contribute to the resolution of any factual issue and were unduly prejudicial. Appellant also maintains the State's other exhibits portrayed the same content.

Visual images of the injuries a defendant inflicted on his victim are relevant evidence for the jury's consideration. *Salazar v. State*, 38 S.W.3d 141, 152–53 (Tex.Crim.App. 2001). At trial, the State offered photographs of the crime scene, Exhibits 2-21. Appellant objected to the admission of Exhibit 10, a photograph of the victim's body, and argued it was unduly prejudicial and cumulative. The trial court overruled the objection on the following basis:

> THE COURT: So for the record, I'm looking at State's Exhibit 6, which shows the body of the decedent at a distance of about -- 20 feet? -- 20, 30 feet.
>
> DEFENSE COUNSEL: I have no idea.
>
> THE COURT: That is my guess, but it's not an up-close photograph as State's Exhibit Number 20, and State's Exhibit 20 depicts the entire body of the decedent at a distance of about 4 to 5 feet. Your objection is overruled as this is the only photograph that depicts this aspect of the scene.

Appellant also objected to Exhibit 30, a video that portrayed the crime scene and the location of the recovered pieces of evidence in relation to the victim's body, as being prejudicial and cumulative. The following details Appellant's objection, and the court's conduction of a balancing test:

> DEFENSE COUNSEL: Your Honor, there are already several pictures of this scene. This video at this point is merely cumulative and prejudicial, extremely.
>
> . . .
>
> DEFENSE COUNSEL: It shows the body again.
>
> THE COURT: Okay. What says the State?
>
> THE STATE: It's not cumulative, Judge. Only the video can accurately depict the relation and all the items to each other. It kind of puts it all in context. As for prejudicial, it just depicts the scene. I don't know that it's got excessive shots or --

of the victim any more than --

THE COURT: Are there any close-ups of the victim?

THE STATE: I don't think so, Judge. I know I wasn't going to publish it.

. . .

DEFENSE COUNSEL: We've already got pictures that depict the scene.

THE COURT: How long is it?

THE STATE: It's pretty long, Judge.

THE COURT: During the break, I'll -- let me take a look at it and let me reserve. I'll give you my ruling.

. . .

THE COURT: The Court is back in session in State v. Cornelius Harrison . . . .

I have been provided State's Exhibit 30, which is the video of the scene on the incident. The DVD itself has two videos on them; one depicting the scene on the night of the incident and then the second video is the same scene during the day.

The nighttime video does depict the body of the decedent. It does reflect an up-close review of the body itself and the area where the wounds occurred -- the gunshot wound at the head. The video in its entirety does depict the location of each of the items picked up by the crime scene unit in relation to the body itself.

While I do -- you know, there's no way around the fact that the -- the depiction of the body is -- is disturbing and -- well, it is disturbing because of the nature of the offense; however, I do think, having seen the video, that it is helpful to the jury to better understand where the -- each of the items picked up by law enforcement were in relation to the body because it does show each of the items numbered and purposely scans the scene to show exactly where each item was in relation to the body, so I do believe it is helpful to the jury if they choose to see it.

The objection is overruled.

. . .

[Appellant relodged his objection to the video]

THE COURT: Okay. If I wasn't clear, that's exactly the balancing test that I conducted. I feel that it is significantly probative for a jury than the prejudicial effects it could have. It's prejudicial, no question, as probably all evidence is, but given that balancing test, I think it is useful to the jury to make that determination.

DEFENSE COUNSEL: Your Honor, I'd like to ask just how it is that this video is more probative than any of the pictures of the scene which have already been

admitted? If that's the case, then it's just cumulative.

> THE COURT: Well, I don't believe it is cumulative. I just described that the video – the method of the media reflects something differently than the photographs does, which is, in my opinion, the relationship as you're walking through the scene of the items to the -- to the decedent's body. So it's on those factors that made the decision.

Appellant maintains these same arguments on appeal, and we find the probative value of the complained-of evidence weights in favor of their admission. The complained-of evidence portrayed no more than the gruesomeness of the injuries inflicted by Appellant. Upon review of Exhibit 10 by the trial court, it found the photograph was admissible for the panoramic view it offered to the jury—the trial court opined it showed the body of the victim at a distance of about twenty to thirty feet, as opposed to the close-up view of a similarly admitted photograph. We agree.

As for the video, the trial court found it also reflected something different than the photographs and showed the relationship of the victim's body in context of the entire crime scene. The trial court determined the video would be helpful to the jury to better understand the location of items in relation to the body. We agree.

Merely because a photograph or video is gruesome does not render it inadmissible. *Chamberlain v. State*, 998 S.W.2d 230, 237 (Tex.Crim.App. 1999). Photographs that are gruesome because they depict a disagreeable reality simply depict the reality of the crime committed. *Id.* A trial court does not err by admitting photographs that are gruesome; it is a matter of balancing the probative value against unfair prejudice. *Id; see Paredes v. State,* 129 S.W.3d 530, 540 (Tex.Crim.App. 2004)(holding the trial court did not abuse its discretion in overruling appellant's objections to gruesome photos of the victim where the photos, albeit graphic, depicted the realities of the crime committed and its aftermath).

The probative value of the complained-of evidence substantially outweighed the danger of unfair prejudice. The trial court did not abuse its discretion in admitting State's Exhibits Nos. 10

and 30. Because we find no error in the admission of the complained-of evidence, we need not address harm. Issue One is overruled.

ACCOMPLICE-WITNESS INSTRUCTION

In his second issue, Appellant argues the trial court erred by not including an accomplice-witness instruction in the jury charge. Furthermore, Appellant maintains Whitfield's testimony was inconsistent about whether he was aware of the plan to shoot the victim, and because Whitfield was *Mirandized* during the investigation, he could have been charged as a suspect. We disagree.

Standard of Review & Applicable Law

A defendant has a right to any defensive jury instruction raised by the evidence, irrespective of whether the evidence is weak or strong. *Cocke v. State*, 201 S.W.3d 744, 747 (Tex.Crim.App. 2006). However, an accomplice-witness instruction is not required when evidence is clear that the witness is not an accomplice as a matter of law or as a matter of fact. *Id.* at 748.

An accomplice is one who participates with a defendant before, during, or after the commission of the crime *and* acts with the requisite culpable mental state. *Id.* An accomplice's testimony must be "corroborated by other evidence tending to connect the defendant with the offense committed; and the corroboration is not sufficient if it merely shows the commission of the offense." TEX.CODE CRIM.PROC.ANN. art. 38.14; *see also Druery v. State*, 225 S.W.3d 491, 498 (Tex.Crim.App. 2007). The accomplice must have engaged in an affirmative act that promoted the commission of the offense committed by the defendant. *Smith v. State*, 332 S.W.3d 425, 439 (Tex.Crim.App. 2011). When a trial court denies a defendant's request for an accomplice-witness instruction, an appellate court reviews the decision for abuse of discretion. *Paredes v. State*, 129 S.W.3d 530, 538 (Tex.Crim.App. 2004). The trial court's decision is an abuse of discretion if it falls outside the zone of reasonable disagreement. *Young v. State*, 283 S.W.3d 854, 874

(Tex.Crim.App. 2009). If the reviewing court determines the trial court erred regarding the jury charge, the appellate court must evaluate the harm caused by the error, if any. *Herron v. State*, 86 S.W.3d 621, 631 (Tex.Crim.App. 2002). If error is preserved at trial, appellant need only show some harm, otherwise, the error is evaluated under an egregious harm standard. *Id.* at 632.

Analysis

Appellant acknowledges the witness, Whitfield, was not an accomplice as a matter of law. However, Appellant contends the trial court erred in not instructing the jury on an accomplice-witness instruction as a matter of fact. Appellant also points our attention to what he characterizes as inconsistent evidence—Whitfield regularly spent time at Appellant's apartment, Whitfield was the driver of the vehicle used during the murder, Whitfield spent the night at Appellant's apartment after the murder, and Whitfield's testimony was conflicting as to who removed the gun from the trunk. The State counters, "other than speculating that Whitfield's actions tended to show that he must have been aware of the plan to murder the victim, he fails to cite to any evidence that Whitfield took any affirmative actions to promote the commission of the victim's murder." We agree.

At trial, Appellant requested an accomplice-witness as a matter of fact instruction, arguing it was warranted because Whitfield was initially a suspect and there was conflicting evidence as to whether Whitfield knew about the plan to shoot the victim, and whether Whitfield feared Appellant. The State responded there was no evidence of any affirmative involvement by Whitefield, or that he had knowledge the victim would be murdered, and for such an instruction to be included, there must be evidence the witness acted with the requisite intent. The trial court agreed and declined to include the instruction.

In the present case, the evidence in the trial record does not indicate Whitfield acted with

the culpable mental state of an accomplice or actively participated in the commission of the murder. More specifically, Whitefield was never charged, and no evidence presented at trial suggested Whitfield participated in either the murder or the preceding events of planning the murder. Although Whitfield was present at the murder and testified he was trying to act "normal" so he would not suffer the same fate as the victim, mere presence at the crime or knowledge of a crime are insufficient to render a person an accomplice. *Cocke*, 201 S.W.3d at 748.

Whitfield's involvement, from the evidence presented at trial, was limited to that of a driver. Whitfield drove the group believing they were going to Red Sands to shoot Appellant's gun, and there is no evidence that contradicts this. Although Whitfield admitted he did not drive off when he had the opportunity, and the fact that he spent the night at Appellant's apartment after the murder, does not support the inclusion of an accomplice-witness instruction. *See Lane v. State*, 991 S.W.2d 904, 907 (Tex.App.—Fort Worth 1999, pet. ref'd)("The record is replete with facts showing [appellant] was present during the entire series of events that night and knew full well what the other three actors were doing. However, [appellant] committed no affirmative act in furtherance of the crime. Further, [appellant's] omission of not stopping the crime and not alerting anyone about the crime was not an omission that our laws have criminalized so that she would become an accomplice by omission."). Appellant fails to show Whitfield performed any affirmative act or possessed the culpable mental state that could be construed as assistance in the murder. In fact, in Appellant's interview, he described Whitfield as an honest and peaceful person, who was scared and crying and did not know what would happen. Appellant also said Whitfield never got out of the driver's seat because he was just driving. Furthermore, testimony given to the officers about how much time Whitfield spent at Appellant's apartment, or how well he knew Appellant, are disconnected from the actual participation in the murder. *See Druery*, 225 S.W.3d

at 498; *Cocke*, 201 S.W.3d at 748.

Accordingly, the trial court was not required to include an accomplice-witness instruction. *See Cocke*, 201 S.W.3d at 748. Because we find the trial court did not abuse its discretion in denying Appellant's request, we decline to address harm. Issue Two is overruled.

CONCLUSION

Having overruled both of Appellant's issues, we affirm.

October 18, 2021

YVONNE T. RODRIGUEZ, Chief Justice

Before Rodriguez, C.J., Palafox, and Alley, JJ.

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