

Opinion issued July 8, 2010.



In The
Court of Appeals
For The
First District of Texas

NO. 01-09-00070-CR

DANTE BERNARD JACKSON, Appellant

V.

THE STATE OF TEXAS, Appellee

**On Appeal from the 184th District Court
Harris County, Texas
Trial Court Cause No. 1140389**

MEMORANDUM OPINION

A jury found appellant, Dante Bernard Jackson, guilty of the murder of Vincent “Derrell” Joseph and sentenced him to fifty years’ confinement. *See* TEXAS PENAL CODE ANN. § 19.02(b) (Vernon 2003). We determine whether the

evidence is legally sufficient to support the conviction. Concluding that it is, we affirm.

Background

On the morning of November 2, 2007, Ivory Christopher stood outside his house and watched Joseph's car driving westbound on Springhaven. After the car stopped, Christopher saw Jackson get out of the Buick that he was in, approach Joseph's car window, and begin talking to Joseph. Christopher recognized Jackson because he had seen him in the neighborhood twice before. A blue Buick was parked next to Joseph's car, facing the opposite direction. Christopher walked back into his house. Approximately thirty seconds to one minute later, he heard a gunshot. He ran to the door and looked outside. He saw Jackson walk around the front end of Joseph's car, carrying what appeared to be a "chrome firearm" downward at an angle by his side. Jackson then returned to the passenger side of the Buick, and the car drove off. Christopher decided to follow it. He followed it for about four and half miles while speaking with a 911 operator. The driver of the Buick turned into the Haverstock Hill apartments. Because it was a gated complex, Christopher could not follow it any further. The car did not have a license plate. Christopher returned to the crime scene and spoke with the police. Three days later, Christopher positively identified Jackson in a photo spread.

Another witness and neighbor, Billy Ray Miller, heard the gunshot that morning and ran outside. He saw a man run from Joseph's car to the Buick, hide something in his jacket, and get into the car. He watched the car drive away. Miller testified that the man he saw running away "resembled" Jackson.

Devan Topps, another neighbor, knew Jackson socially. About six weeks before Joseph's death, Jackson approached Topps and asked if he knew Joseph's schedule. Topps refused to answer the inquiry. Jackson also asked Topps to "set Derrell up" for him. On the morning of the murder, the sound of a gunshot awoke Topps. He went outside to Joseph's car, found the engine running, and saw Joseph lying inside. At this point, another neighbor, Edwina Parson, arrived, and she attempted to render first aid.

Parson also had heard the gunshot and came out to investigate. She entered the car and attempted to perform CPR on Joseph. She reached around his head and felt a hole, and then wrapped his head in a towel.

Houston Police officer J.S. Hammerle investigated the crime scene. There he found the internal components of a shotgun shell. He also found blood and human tissue all over the interior of the car. He testified that a shotgun barrel could be cut as short as three inches, and a pistol grip could be created by cutting off the stock. A shotgun could also have a layer of chrome applied to change its

appearance. Police recovered the Buick five or six days after the murder when it was involved in an accident and abandoned, but they did not recover the gun.

Another investigator, Officer R. Martinez, testified that Christopher identified Jackson in a photo spread, and that Miller had identified Jackson's "physical features" in a photo spread. He discovered that the Buick had been stolen the previous summer. After the identifications from Miller and Christopher, the police issued a warrant for Jackson and arrested him at the Haverstock Hill apartments.

The assistant medical examiner, Pramod Gumpeni, M.D., testified that Joseph died of a perforating shotgun wound to the head, which resulted in a skull fracture and brain injuries. He found stippling on Joseph's face, which is created by gunpowder that is ejected when the bullet leaves the barrel. The stippling found here indicates that the shotgun was between one and six inches from Joseph's head when the gunman fired it. The bullet entered Joseph's head near the center of his forehead, traveling left to right, front to back, and slightly upward, and exited the back right side of his head. He testified that the path of the bullet could be consistent with Joseph being shot while sitting in the driver's seat by someone standing outside the car.

Sufficiency of the Evidence

Jackson contends the evidence is legally insufficient to sustain a murder conviction, either as the principal actor, or as a party to the crime.

A. Standard of Review

In a legal sufficiency review, we consider the entire trial record to determine whether, viewing the evidence in the light most favorable to the verdict, a rational jury could have found the accused guilty of all essential elements of the offense beyond a reasonable doubt. *See Jackson v. Virginia*, 443 U.S. 307, 318–19, 99 S. Ct. 2781, 2788–89 (1979); *Vodochodsky v. State*, 158 S.W.3d 502, 509 (Tex. Crim. App. 2005); *McClesky v. State*, 224 S.W.3d 405, 409 (Tex. App.—Houston [1st Dist.] 2006, pet. ref’d). This standard of review applies to both direct and circumstantial evidence cases. *King v. State*, 895 S.W.2d 701, 703 (Tex. Crim. App. 1995). The jurors are the exclusive judges of the facts, the credibility of the witnesses, and the weight to give their testimony. *Margraves v. State*, 34 S.W.3d 912, 919 (Tex. Crim. App. 2000). A jury is entitled to accept one version of the facts and reject another, or reject any part of a witness’s testimony. *Id.* Furthermore, reconciliation of conflicts in the evidence is within the jury’s discretion—such conflicts alone will not call for reversal if enough credible evidence exists to support a conviction. *Losada v. State*, 721 S.W.2d 305, 309 (Tex. Crim. App. 1986). “Each fact need not point directly and independently to

the guilt of the appellant, as long as the cumulative force of all the incriminating circumstances is sufficient to support the conviction.” *Hooper v. State*, 214 S.W.3d 9, 13 (Tex. Crim. App. 2007).

B. Murder

Under the Texas Penal Code, 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) (Vernon 2003). Even if no eyewitness testifies to seeing the defendant commit the crime, “the State may prove the defendant’s identity and criminal culpability by either direct or circumstantial evidence, coupled with all reasonable inferences from that evidence.” *Gardner v. State*, 306 S.W.3d 274, 285 (Tex. Crim. App. 2009).

C. Legal Sufficiency of the Evidence

Jackson complains that the evidence is legally insufficient to show that he murdered Joseph.¹ See TEX. PENAL CODE ANN. § 19.02(b) (Vernon 2003). He specifically contends that no proof exists that he shot Joseph. Jackson correctly observes that no witness saw the fatal shot being fired. Christopher, however, saw

¹ Because we hold that the evidence is legally sufficient to sustain Jackson’s murder conviction as the principal actor, we need not address the sufficiency of the evidence relating to Jackson as a party to the crime. See TEX. PENAL CODE ANN. § 7.02(a)(2) (Vernon 2003).

Jackson talking to Joseph before the murder and, a minute or two later, heard a shot fired and then saw Jackson flee the crime scene holding what appeared to be a firearm. Christopher testified that he followed the Buick back to the Haverstock Hill apartments, where police later arrested Jackson. Topps testified that Jackson sought assistance from Topps to “set up” Joseph in the weeks before the murder. Viewing the evidence in the light most favorable to the jury’s verdict, the evidence shows that a rational trier of fact could have found beyond a reasonable doubt that Jackson committed the offense. *See Gardner*, 306 S.W.3d at 285–86; *see also King*, 895 S.W.2d at 703. The jurors are the exclusive judges of the credibility of witnesses and the weight to give their testimony, thus we must defer to the jury’s reliance on the witnesses. *See id.*

Jackson points out a contradiction in the testimony regarding the murder weapon: Christopher said the gun he saw resembled a handgun, not a shotgun. In addition, Jackson stepped into the passenger side of the Buick, and someone else drove it away. That driver was about three feet from Joseph. Other testimony reveals that the police discovered shotgun pieces at the crime scene. The doctor performing the autopsy testified that the wound was likely caused by a shotgun. The record supports a reasonable explanation for this discrepancy: that the gun Jackson carried was a shotgun that was sawed off and plated in chrome, thus resembling a handgun. Christopher testified that he was familiar with firearms,

and the sound of the gunshot that he heard was “almost between the sound of a handgun and a rifle.” Christopher saw Jackson carrying the weapon four or five seconds after he heard the second shot. Given the medical examiner’s testimony that the perpetrator fired the weapon within one to six inches of Joseph’s face, the physical evidence supports the jury’s implied finding that Jackson fired the weapon the witnesses saw Jackson carry away with him and that it was the murder weapon. With the other evidence presented in this case, the jury was entitled to reconcile this conflict in the testimony. *See Losada*, 721 S.W.2d at 309.

We hold that the evidence is legally sufficient to sustain a murder conviction.

Conclusion

We affirm the judgment of the trial court.

Jane Bland
Justice

Panel consists of Justices Jennings, Hanks, and Bland.

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