Opinion issued July 22, 2010.

In The

Court of Appeals

For The

First District of Texas

NO. 01-09-00383-CR

NAJIA OMAR MOHAMAD, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the 174th District Court
Harris County, Texas
Trial Court Case No. 1092190

MEMORANDUM OPINION

Appellant, Najia Mohamad, appeals from a judgment convicting her for the murder of her daughter, Rohina Abdul Ali. *See* TEX. PENAL CODE ANN. § 19.02 (Vernon 2003). Appellant pleaded not guilty. A jury found appellant guilty and

determined her sentence at 75 years confinement. In two issues, appellant contends the evidence is legally and factually insufficient to support her conviction. Determining the evidence is legally and factually sufficient to sustain appellant's conviction for murder, we affirm.

BACKGROUND

In 2006, appellant called a family friend, Mitra Hadad, and told her that appellant's daughter had committed suicide. Hadad phoned the police and went to appellant's apartment. When first responders arrived at the apartment they discovered the body of Ali and realized it was not a suicide. Police officers and investigators arrived to find no signs of forced entry, no valuables taken from the apartment, and no other indications that anyone other than appellant, Ali, and Ali's four-year old daughter had been in the apartment when Ali died.

It was later determined that someone had struck Ali's head several times with a blunt object. The head of a sledgehammer was found underneath Ali's pillow. The shape, size, and distinct markings on the head of the sledgehammer were consistent with the wounds on Ali's head.

When investigators initially questioned appellant about what happened, she said she had gone to bed early and last saw Ali watching television in the living room. In the morning, she woke up to gurgling noises coming from Ali in a nearby bed. Appellant then covered Ali with a comforter because she did not want her

granddaughter to see the body. After that, appellant stated she fell on the floor unconscious for an unknown span of time. When she awoke, she could not find the phone or her glasses, and her granddaughter was asking for food so she made breakfast for the child. Three to four hours after first waking up, appellant called Hadad. She stated that, at that point in time, she did not know whether her daughter was dead. She also noted that at one point during the morning her granddaughter pushed open the door, and appellant noticed that it had been left unlocked.

The next day, appellant gave a different version of events to police. This time, she said that after she first passed out, she used her arms to drag herself to a phone. When she tried to dial the numbers on the phone, she passed out a second time. She stated that when she awoke she noticed the front door was open, called Hadad, and then fed her granddaughter breakfast. She also mentioned that the father of Ali's daughter had threatened to find Ali one day, and she believed he was involved in the murder.

At trial, the State presented evidence from Ali's daughter that, on the night of the murder, no one else was in the apartment other than herself, appellant, and her mother. Ali's daughter also testified that she slept in the same bed as her mother. That night she saw her mother lay her head on the pillow, touch her head, and then her mother's hands had blood on them. The State also questioned a

downstairs neighbor, who heard hammering coming from appellant's apartment at 8:00 or 9:00 p.m. the night before Ali's body was found. The neighbor also testified that she could usually hear if someone climbed the stairs to access appellant's apartment, but she had not heard anyone go up the stairs that night.

At trial, the medical examiner who performed an autopsy on Ali testified that the cause of death was blunt head trauma with skull fractures. Ali had five impact sites on her scalp, including the left front of her head, left forehead, left temple, and behind her left ear. State's exhibit 21, the autopsy report, stated that the manner of death was homicide. The medical examiner stated that the markings on the sledgehammer were consistent with the injuries found on Ali's head. On cross-examination, the medical examiner stated that any of the five blows to her head could have caused loss of consciousness.

Sufficiency of Evidence for Murder

In two points of error, appellant contends the evidence is legally and factually insufficient to prove appellant's guilt for the offense of murder.

A. Law Pertaining to Legal Sufficiency

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. Va.*, 443 U.S. 307, 319, 99 S. Ct. 2781,

2789 (1979); *Vodochodsky v. State*, 158 S.W.3d 502, 509 (Tex. Crim. App. 2005). 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. *See id.* In conducting our review of the legal sufficiency of the evidence, we do not reevaluate the weight and credibility of the evidence, but ensure only that the jury reached a rational decision. *Muniz v. State*, 851 S.W.2d 238, 246 (Tex. Crim. App. 1993). In reviewing the evidence, circumstantial 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 v. State*, 214 S.W.3d 9, 13 (Tex. Crim. App. 2007). On appeal, the same standard of review is used for both circumstantial and direct evidence cases. *Id.*

B. Law Pertaining to Factual Sufficiency

In a factual sufficiency review, we view all of the evidence in a neutral light. *Ladd v. State*, 3 S.W.3d 547, 557 (Tex. Crim. App. 1999). We will set the verdict aside only if (1) the evidence is so weak that the verdict is clearly wrong and manifestly unjust or (2) the verdict is against the great weight and preponderance of the evidence. *Johnson v. State*, 23 S.W.3d 1, 11 (Tex. Crim. App. 2000).

Under the first prong of *Johnson*, we cannot conclude that a conviction is "clearly wrong" or "manifestly unjust" simply because, on the quantum of evidence admitted, we would have voted to acquit had we been on the jury. *Watson v. State*, 204 S.W.3d 404, 417 (Tex. Crim. App. 2006). Under the second prong of *Johnson*, we cannot declare that a conflict in the evidence justifies a new trial simply because we disagree with the jury's resolution of that conflict. *Id.* Before finding that evidence is factually insufficient to support a verdict under the second prong of *Johnson*, we must be able to say, with some objective basis in the record, that the great weight and preponderance of the evidence contradicts the jury's verdict. *Id.* In conducting a factual sufficiency review, we must also discuss the evidence that, according to appellant, most undermines the jury's verdict. *See Sims v. State*, 99 S.W.3d 600, 603 (Tex. Crim. App. 2003).

In reviewing the factual sufficiency of the evidence, appellate courts should afford almost complete deference to a jury's decision when that decision is based upon an evaluation of credibility. *Lancon v. State*, 253 S.W.3d 699, 705 (Tex. Crim. App. 2008). The jury is in the best position to judge the credibility of a witness because it is present to hear the testimony, as opposed to an appellate court relying on the cold record. *Id.* The jury may choose to believe some testimony and disbelieve other testimony. *Id.* at 707.

C. Elements of Murder

Appellant challenges the sufficiency of the evidence to sustain her conviction. Under Texas Penal Code section 19.02, a person commits murder when she (1) intentionally or knowingly causes the death of an individual; or (2) 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.

D. Sufficiency of Evidence Analysis

In her first point of error, appellant contends the evidence is legally insufficient to support her conviction because the State failed to establish a temporal link between Ali's death and any action on the part of appellant. Appellant claims that the State failed to prove she struck Ali or that she had anything to do with the murder.

While mere presence at the scene is not enough to sustain a conviction, that fact may be considered in determining whether an appellant was a party to the offense. *Wygal v. State*, 555 S.W.2d 465, 469 (Tex. Crim. App. 1977); *Trevino v. State*, No. 01-08-00426-CR, 2009 WL 3321417 at *3 (Tex. App.—Houston [1st Dist.] Oct. 15, 2009, pet. ref'd) (mem. op., not designated for publication). Here, appellant admits she was present in the apartment when her daughter was killed. Circumstantial evidence also shows that there was no forced entry to the apartment, and nothing in the apartment was ransacked or taken. The only other

person present in the apartment was Ali's four-year old daughter. Appellant waited three to four hours before calling for help, and when she called for help, she gave conflicting statements to the police. Appellant's neighbors did not hear anyone use the stairs leading to the apartment. Viewing the evidence in a light most favorable to the verdict, the jury could have reasonably determined that because appellant was the only person with the complainant, other than a four year old child, when the complainant was repeatedly struck with what was believed to be a sledgehammer, the evidence establishes murder. We hold there is legally sufficient evidence from which the jury could have found beyond a reasonable doubt that appellant was guilty of Ali's murder. *See Hooper*, 214 S.W.3d at 13 (finding circumstantial evidence as probative as direct evidence in establishing guilt of an actor and sufficient to establish guilt); *Guevara v. State*, 152 S.W.3d 45, 52 (Tex. Crim. App. 2004) (finding evidence of defendant's inconsistent statements and implausible explanations to police sufficient to support jury's verdict of murder).

In her second point of error, appellant contends the evidence is factually insufficient to support her conviction because the State failed to show affirmative links connecting her actions to the murder. She claims the State presented circumstantial evidence that only produced the mere probability that appellant could have caused the death of her daughter and that other mere probabilities

existed. Appellant asserts that the jury would have had to recreate their own story in order to determine what happened the night of the murder, and thus their verdict was clearly contrary to the overwhelming weight of the evidence as to be clearly wrong and unjust.

Our factual-sufficiency review must be appropriately deferential to the jury's determination so as to avoid substituting our judgment for that of the jury, even if we disagree with its determination. *King v. State*, 29 S.W.3d 556, 563 (Tex. Crim. App. 2000). The jury is the sole judge of the weight and credibility of the witness testimony. *Johnson*, 23 S.W.3d at 7. Accordingly, we reverse the jury's determination only when a manifest injustice has occurred. *Id.* at 9. If there is evidence that establishes guilt beyond a reasonable doubt, and the trier of fact believes that evidence, we are not authorized to reverse the judgment on sufficiency of the evidence grounds. *Moreno v. State*, 755 S.W.2d 866, 867 (Tex. Crim. App. 1988).

Here, appellant asserts that there is a possibility that Ali's four-year old daughter could have killed her mother or that the door was left unlocked at night and an intruder murdered Ali. Mohamad did not testify at trial, but the jury apparently chose to disbelieve Mohamad's versions of events. The jury was provided transcripts of Mohamad's two translated conversations with police officers. They also heard testimony from Hadad about what appellant told police

on the morning she called for help. Although appellant asserted that an intruder had possibly entered their home and committed the murder, there was no sign that anyone had entered the apartment by force; the granddaughter testified that no one else was in the apartment; and the downstairs neighbor testified that she did not hear anyone go up the staircase leading to appellant's apartment. Additionally, although appellant asserted that her granddaughter had possibly committed the murder, her granddaughter testified that when she was lying in bed she saw her mother, the complainant, touch her head and then there was blood on her hands.

Based on all of the evidence presented, the jury could have chosen not to believe appellant's version of events that she related to officers later and could instead have inferred from other evidence presented at trial that appellant had murdered her daughter. *See Nasir v. State*, No. 01-03-00150-CR, 2004 WL 350479 at *5 (Tex. App.—Houston [1st Dist.] Feb. 26, 2004, pet. ref'd) (mem. op., not designated for publication) (finding evidence factually sufficient to support murder conviction because jury did not have to believe appellant's testimony that intruder had broken in and committed murder when there was no sign that anyone had entered the house by force or had taken anything valuable); *see also Lancon*, 253 S.W.3d at 707 (finding the jury may choose to believe some testimony and disbelieve other testimony). Giving due deference to the jury's weighing of the evidence, a neutral examination of the evidence shows that the evidence is not so

weak that the jury's finding appellant guilty of murder is clearly wrong or manifestly unjust and that the determination of guilt is not against the great weight and preponderance of the evidence. We hold the evidence is factually sufficient to prove appellant's guilt for murder.

We overrule appellant's first and second issues.

Conclusion

We affirm the judgment of the trial court.

Elsa Alcala
Justice

Panel consists of Justices Jennings, Alcala, and Wilson.[1]

Do not publish. TEX. R. APP. P. 47.2(b).

[1] The Honorable Davie L. Wilson, retired Justice, First Court of Appeals, participating by assignment.