Opinion issued May 5, 2016

In The

Court of Appeals

For The

First District of Texas

NO. 01-15-00421-CR

ALBERT LYNCH, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the 339th District Court
Harris County, Texas
Trial Court Case No. 1314602

MEMORANDUM OPINION

Appellant, Albert Lynch was charged by indictment with capital murder.[1] Appellant pleaded not guilty. A jury found him guilty, and the trial court assessed

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[1] *See* TEX. PENAL CODE ANN. § 19.02(b)(1) (Vernon 2011), § 19.03(a)(2) (Vernon Supp. 2015).

punishment at life imprisonment without parole. In three issues on appeal, Appellant argues (1) the evidence is insufficient to support his conviction, (2) the trial court abused its discretion by admitting evidence of the victim's character during the guilt-innocence phase of trial, and (3) the trial court abused its discretion by allowing a State's expert to testify about Appellant's intent.

We affirm.

Background

Salvador Maya was working as a clerk at a Texaco corner store in Houston, Texas. At about 3:45 in the morning on May 16, 2011, a man wearing a mask, a dark-colored jumpsuit, and black and white Air Jordan Retro 9 shoes, entered the corner store, approached the cash register area, and pointed a revolver at Maya. Maya retreated to a corner of the enclosed area away from the man. The other people in the store fled to the bathrooms. Leaning in through an opening in the glass surrounding the area, the armed man shot Maya once in the chest and once in the back, killing him. The man climbed over the counter, took some cash, a 9 millimeter pistol, and a pack of cigarettes. He climbed back over the counter and fled.

A couple of hours before the shooting, Appellant had been at the Texaco with some of his friends: Leroy Ambrose, Andrew Griffin, and another friend. Ambrose testified at trial that they went there to hang out. Surveillance video shows that, during the earlier visit, one of Appellant's friends leaned in through the window at

the cash-register area and looked around the enclosed space. When he left the Texaco at the end of that visit, Appellant gestured crudely at Maya with his middle finger.

Shortly after the shooting, Biance Lewis was asleep at her apartment, which was about a block away from the Texaco. She was woken by a "hysterical knock" at the door. She answered the door, and Appellant came in. He was sweating, hyperventilating, and panicking. Lewis asked Appellant what was wrong, and Appellant told her, "I just downed a nigga." Lewis understood that to mean Appellant had shot someone.

Lewis called her fiancé, Leroy Ambrose. In the moments before Lewis called, Ambrose was on his way back to the Texaco with Griffin. When Ambrose and Griffin arrived at the Texaco, they did not see anyone in the store. They decided to leave. As they left, Ambrose saw a sheriff's patrol car arrive on the scene. That is when he received Lewis's telephone call.

Ambrose and Griffin went to Lewis's apartment. Appellant was there. Appellant began accusing Griffin of leaving him. Ambrose saw Appellant had two guns. One was a revolver that he, Appellant, and others shared. The other was a 9 millimeter pistol that he had not seen before. Appellant said things such as "I told y'all I was going to get him," and "Y'all thought I was playing." Lewis heard Appellant reference "the store," which everyone used to refer to the Texaco. In his

agitated state, Appellant said, "It's not about the money. Y'all could have the money." Appellant then took a wad of cash from his pocket and threw it on the floor. The money, mostly 10 and 20 dollar bills, covered about half of the kitchen floor. During that time, Appellant was not employed.

After that night, Ambrose did not see Appellant for a while. A few days later, however, Appellant came into the neighborhood and saw Ambrose. Appellant asked Ambrose if anybody had asked about him. Appellant still had the 9 millimeter pistol with him.

The Harris County Sheriff's Office obtained the surveillance video from the Texaco. The surveillance video showed that Appellant's shoes appeared similar to or the same as the shoes worn by the robber, black tennis shoes with some white on them. Because the robber had stepped on the counter to get to the cash register area, the officers obtained a print of the shoe left on the counter. Investigation revealed the shoe to be a size 12-1/2 Nike Air Jordan Retro 9. Ambrose testified at trial that, around the time of the shooting, Appellant wore Air Jordans. After Appellant was arrested, Deputy D. Wolfford obtained a warrant and measured Appellant's feet, using a Braddock Device to measure shoe size. Deputy Wolfford testified at trial that Appellant's shoe size was 12-1/2.

Photos of Appellant's feet in the Braddock Device were admitted at trial. In the photographs, the lines at the end of Appellant's toes show a measurement of

about 11-1/2 shoe size. The Braddock Device also has a tool for measuring shoe size based on the location of the ball of the foot. These measurements showed Appellant's shoe size to be over 12.

The video surveillance also showed that the robber wore a mask and dark jumpsuit. Deputy Wolfford testified that investigation of the surveillance video showed braided hair and a beard extending out from under the mask. Appellant had braided hair and a beard at the time of the shooting. Ambrose testified at trial that, around the time of the shooting, Appellant owned a dark blue jumpsuit.

At trial, the State presented the testimony of Robert Baldwin, its expert witness on firearm identification. Baldwin has testified about "firearms identification and evaluation of firearms and functionality of firearms." Baldwin testified that the bullet projectiles found in Maya were fired from either a .38 Special or a .357 Magnum cartridge, which are designed for use in revolvers. Baldwin identified the gun used in the robbery to be a revolver, based on the surveillance video. He testified about the difference between shooting with the gun cocked and without the gun cocked, explaining that a gun that has not been cocked requires more force to pull the trigger and fire the bullet. He further testified that firing two bullets would require two separate pulls of the trigger.

The State asked Baldwin what the video surveillance reflected about Appellant's intent to shoot Maya. Appellant objected, and the trial court overruled

the objection. Baldwin testified, "Based on the way the individual in the video is extending his arm and pointing the firearm in the direction of the clerk, that would be consistent in my mind with someone wanting to strike or shoot the person who's at the other end."

The State also called Maya's sister and Maya's boss to testify. Maya's boss, Syed Hussain, testified that he hired Maya because he was honest and trustworthy. Maya's sister testified that Maya had hoped to study computers at college. Appellant objected to these areas of testimony as improper victim character evidence.

Finally, the State presented proof of DNA results from a swab taken at the store. The surveillance video showed the robber touching a part of the glass that surrounded the cash register area. The robber was wearing gloves. Four points on the glass around the cash register area were tested for DNA. One swab could not exclude Appellant as the contributor. That swab also could not exclude 1 in 11 of all Caucasians, 1 in 23 of all African Americans, and 1 in 11 of all Hispanics.

Sufficiency of the Evidence

In his third issue, Appellant argues the evidence is insufficient to support his conviction.

A. Standard of Review

We review the sufficiency of the evidence establishing the elements of a criminal offense for which the State has the burden of proof under a single standard

of review. *Matlock v. State*, 392 S.W.3d 662, 667 (Tex. Crim. App. 2013) (citing *Brooks v. State*, 323 S.W.3d 893, 895 (Tex. Crim. App. 2010)). This standard of review is the standard enunciated in *Jackson v. Virginia*, 443 U.S. 307, 319, 99 S. Ct. 2781, 2789 (1979). *Winfrey v. State*, 393 S.W.3d 763, 768 (Tex. Crim. App. 2013). Pursuant to this standard, evidence is insufficient to support a conviction if, considering all the record evidence in the light most favorable to the verdict, no rational fact finder could have found that each essential element of the charged offense was proven beyond a reasonable doubt. *See Jackson*, 443 U.S. at 319, 99 S. Ct. at 2789; *Laster v. State*, 275 S.W.3d 512, 517 (Tex. Crim. App. 2009). We can hold evidence to be insufficient under the *Jackson* standard in two circumstances: (1) the record contains no evidence, or merely a "modicum" of evidence, probative of an element of the offense, or (2) the evidence conclusively establishes a reasonable doubt. *See Jackson*, 443 U.S. at 314, 318 & n.11, 320, 99 S. Ct. at 2786, 2789 & n.11; *Britain v. State*, 412 S.W.3d 518, 520 (Tex. Crim. App. 2013).

The sufficiency-of-the-evidence standard gives full play to the responsibility of the fact finder to resolve conflicts in the testimony, to weigh the evidence, and to draw reasonable inferences from basic facts to ultimate facts. *Jackson*, 443 U.S. at 319, 99 S. Ct. at 2789; *Clayton v. State*, 235 S.W.3d 772, 778 (Tex. Crim. App. 2007). An appellate court presumes that the fact finder resolved any conflicts in the evidence in favor of the verdict and defers to that resolution, provided that the

resolution is rational. *See Jackson*, 443 U.S. at 326, 99 S. Ct. at 2793. In viewing the record, direct and circumstantial evidence are treated equally; 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. *Clayton*, 235 S.W.3d at 778. Finally, the "cumulative force" of all the circumstantial evidence can be sufficient for a jury to find the accused guilty beyond a reasonable doubt. *See Powell v. State*, 194 S.W.3d 503, 507 (Tex. Crim. App. 2006).

B. Analysis

Appellant was charged with capital murder. As it applies to Appellant, a person commits capital murder if he commits murder and "intentionally commits the murder in the course of committing or attempting to commit . . . robbery." TEX. PENAL CODE ANN. § 19.03(a)(2) (Vernon Supp. 2013). A person commits murder if he "intentionally causes the death of an individual." TEX. PENAL CODE ANN. § 19.02(b)(1) (Vernon 2011). Appellant acknowledges there is sufficient evidence that someone committed capital murder. Appellant argues, however, that there is insufficient evidence to establish that he was the person who committed the offense. We disagree.

The evidence established that Appellant frequented the Texaco station where the offense occurred and that he had been there earlier that day. During the visit earlier that day, one of Appellant's friends leaned in through the window at the cash

register area and looked around the enclosed space. When he left the Texaco at the end of his earlier visit, Appellant gestured crudely at Maya with his middle finger.

A few hours later, a person wearing a dark jumpsuit and ski mask shot Maya and stole money and a 9 millimeter pistol. The gun used to shoot Maya was a revolver. Ambrose testified that he, Appellant, and others shared a revolver. The build of the robber matched Appellant's build. Both Lewis and Ambrose testified that Appellant owned a dark blue jumpsuit at the time in question. Deputy Wolfford determined from watching the surveillance video of the robbery that the robber had a beard and braided hair. Appellant had a beard and braided hair at the time of the shooting. Money and a 9 millimeter pistol were reported stolen from the Texaco.

A print of the shoe of the robber was obtained by the police. The surveillance video showed the shoes were black with some white markings. Investigation of the shoe print revealed the shoes were size 12-1/2 Nike Air Jordan Retro 9s. Ambrose testified that, around the time of the shooting, Appellant wore black and white Air Jordans. Wolfford testified that a measurement of Appellant's foot indicated that Appellant's shoe size was 12-1/2.

Lewis testified that, during the morning of the offense, she had been asleep. Some time around 3:00 that morning, Appellant knocked at the door. Lewis described it as "a hysterical knock." When she opened the door, Appellant was sweating, hyperventilating, and panicking. Lewis asked Appellant what was wrong,

and Appellant told her, "I just downed a nigga." Lewis understood that to mean Appellant had shot someone.

Lewis called Ambrose. Ambrose testified that, before Lewis called, he was on his way to the Texaco with Griffin. When they arrived, they did not see anyone in the store. They decided to leave. As they left, Ambrose saw a sheriff's patrol car arrive on the scene. That is when he received Lewis's telephone call.

Ambrose and Griffin went to Lewis's apartment. Appellant was there. Appellant began accusing Griffin of leaving him. Ambrose saw Appellant had the revolver they would share and a 9 millimeter pistol he had not seen before. Appellant said things such as "I told y'all I was going to get him," and "Y'all thought I was playing." Lewis heard Appellant reference "the store," which everyone used to refer to the Texaco. In his agitated state, Appellant said, "It's not about the money. Y'all could have the money." Ambrose testified that Appellant then took a wad of cash from his pocket and threw it on the floor. The money, mostly 10 and 20 dollar bills, covered about half of the kitchen floor. Ambrose testified that Appellant did not have a job at the time.

After that night, Ambrose did not see Appellant for a few days. When Ambrose saw Appellant three days later, Appellant asked if anybody had asked about him. Appellant still had the 9 millimeter pistol with him.

In his challenge on the sufficiency of the evidence, Appellant argues that Lewis and Ambrose "were unable in trial to affirmatively link Appellant to the robbery at the Texaco gas station." We disagree. Based on Lewis's and Ambrose's testimony, the record establishes that Appellant arrived at Lewis's apartment shortly before Lewis called Ambrose. When Lewis called him, Ambrose was at the Texaco at a time he could not see people inside but just before deputies arrived. Appellant referred to having just killed someone, and mentioned "the store"—known to mean the Texaco—within that context. Appellant had money and a 9 millimeter pistol in his possession when he arrived at Lewis's apartment, which were the items reported taken from the Texaco. Lewis's and Ambrose's testimony sufficiently links Appellant to the robbery and murder at the Texaco.

Appellant argues that neither Lewis nor Ambrose saw Appellant commit the offense. This is not relevant. "Identity of a perpetrator can be proved by direct or circumstantial evidence; eyewitness identification is not necessary." *Greene v. State*, 124 S.W.3d 789, 792 (Tex. App.—Houston [1st Dist.] 2003, pet. ref'd) (citing *Earls v. State*, 707 S.W.2d 82, 85 (Tex. Crim. App. 1986)); *see also Clayton*, 235 S.W.3d at 778 (holding circumstantial evidence alone can be sufficient to establish guilt).

Appellant next argues that, contrary to Deputy Wolfford's testimony, the record established that his shoe size was 11-1/2, not 12-1/2. We note at the outset

that, even if this is true, this does not disprove that Appellant was wearing 12-1/2 sized shoes at the time of the incident. Even so, we disagree that the record conclusively establishes that Appellant's shoe size was 11-1/2. Photographs were admitted into evidence showing Appellant's feet in a Brannock Device, used to measure shoe size. The lines at the end of Appellant's toes show a measurement of about 11-1/2 shoe size. The Braddock Device also has a tool for measuring shoe size based on the location of the ball of the foot, however. These measurements showed Appellant's shoe size to be over 12. To the degree these measurements present a conflict in Appellant's shoe size, it is the sole province of the jury to resolve conflicting evidence. *See Clayton*, 235 S.W.3d at 778.

Related to this, Appellant points out that the shoe print at the Texaco was identified to be a Nike Air Jordan Retro 9. He further points out that Ambrose only testified that Appellant wore black and white Air Jordans at the time. Appellant suggests that Ambrose's failure to specify whether the shoes were Retro 9s creates an inconsistency in the evidence. It was the jury's responsibility to determine what weight to give Ambrose's testimony concerning the shoes worn by Appellant at the time. *See id.*

Finally, Appellant complains of the significance of certain DNA evidence admitted into evidence. Four points on the glass around the cash register area were tested for DNA. One of those swabs could not exclude Appellant as the contributor.

That swab also could not exclude 1 in 11 of all Caucasians, 1 in 23 of all African Americans, and 1 in 11 of all Hispanics. Appellant argues that this low rate of exclusion cannot support his conviction.

We have not relied on the DNA evidence in our review of the sufficiency of the evidence. Accordingly, we do not need to determine what, if any, extra significance this evidence would have provided to our review if we had included it.

We hold the evidence is sufficient to support the jury's determination that Appellant committed the offense in question. We overrule Appellant's third issue.

Victim Character Evidence

In his first issue, Appellant argues the trial court abused its discretion by admitting evidence of the victim's character during the guilt-innocence phase of trial.

A. Standard of Review

We review a trial court's ruling on the admission or exclusion of evidence for an abuse of discretion. *Tillman v. State*, 354 S.W.3d 425, 435 (Tex. Crim. App. 2011). We will uphold the trial court's ruling unless it falls outside the "zone of reasonable disagreement." *Id.*

If the admission or exclusion of evidence was erroneous, error in applying the rules of evidence is non-constitutional error. *See Walters v. State*, 247 S.W.3d 204, 219 (Tex. Crim. App. 2007) ("The erroneous exclusion of evidence offered under

the rules of evidence generally constitutes non-constitutional error."). Non-constitutional error requires reversal only if it affects the substantial rights of the accused. *See* TEX. R. APP. P. 44.2(b); *Barshaw v. State*, 342 S.W.3d 91, 93 (Tex. Crim. App. 2011). "A substantial right is affected when the error had a substantial and injurious effect or influence in determining the jury's verdict." *King v. State*, 953 S.W.2d 266, 271 (Tex. Crim. App. 1997). We will not overturn a criminal conviction for non-constitutional error if, after examining the record, we have fair assurance that the error did not influence the jury, or had but a slight effect. *Barshaw*, 342 S.W.3d at 93.

We review the entire record to ascertain the effect or influence on the verdict of the wrongfully admitted evidence. *Id.* In assessing the likelihood that the jury's decision was improperly influenced, we consider the record as a whole, including testimony and physical evidence, the nature of the evidence supporting the verdict, and the character of the alleged error and how it might be considered in connection with other evidence in the case. *Id.* at 94; *see also Motilla v. State*, 78 S.W.3d 352, 355–56 (Tex. Crim. App. 2002).

B. Analysis

Appellant identifies four pieces of testimony that he argues is victim character evidence. Victim character evidence is a subset of victim impact evidence. *See Salazar v. State*, 90 S.W.3d 330, 335 (Tex. Crim. App. 2002). Victim character

evidence "is designed to give the jury 'a quick glimpse of the life that the [defendant] chose to extinguish, to remind the jury that the person whose life was taken was a unique human being.'" *Id.* (quoting *Payne v. Tennessee*, 501 U.S. 808, 830–31, 111 S. Ct. 2597, 2611 (1991) (O'Connor, J., concurring)). Victim character testimony is irrelevant and, therefore, inadmissible "at the guilt-innocence phase of a trial because it does not tend to make more or less probable the existence of any fact of consequence with respect to guilt or innocence." *Love v. State*, 199 S.W.3d 447, 456–57 (Tex. App.—Houston [1st Dist.] 2006, pet. ref'd) (citing *Miller-El v. State*, 782 S.W.2d 892, 895 (Tex. Crim. App. 1990)).

Two of the statements about which Appellant complains came from the testimony of Maya's employer, Hussain. Appellant complains about the following exchange:

> Q. (By [Prosecutor]) Why is it that you hired him?
>
> A. Mainly because even before I hired him we were friends. He was honest. He was trustworthy and --
>
> Q. During this time that you worked for him, did he comply with your rules? Did he do what he was supposed to do?
>
> A. Yes.
>
> . . . .
>
> A. Yes, he did.

The other two statements came from Maya's sister. Appellant complains about the following exchange:

Q. (By [Prosecutor]) What did your brother want to go on to do?

A. He wanted to go to [a] technology college, to a college where he could learn about computers.

. . . .

Q. (By Prosecutor) And was he timely? Did he get there on time? Did he do good work?

. . . .

A. Yes.

When Appellant raised objections to the testimony of both witnesses, the State asserted the relevance of the evidence was only to provide background context for Maya's presence at the scene. Appellant argues this evidence only serves as improper victim character evidence. We do not need to resolve whether the challenged statements are victim character evidence because, even if they are, any error in the admission is harmless.

Non-constitutional error requires reversal only if it affects the substantial rights of the accused. *See* TEX. R. APP. P. 44.2(b); *Barshaw*, 342 S.W.3d at 93. A substantial right is affected when the error had a substantial and injurious effect or influence in determining the jury's verdict. *King*, 953 S.W.2d at 271. In assessing the likelihood that the jury's decision was improperly influenced, we consider the record as a whole, including testimony and physical evidence, the nature of the evidence supporting the verdict, and the character of the alleged error and how it

might be considered in connection with other evidence in the case. *Barshaw*, 342 S.W.3d at 94; *see also Motilla*, 78 S.W.3d at 355–56.

As we concluded in our sufficiency-of-the-evidence review, there was significant evidence to support Appellant's conviction, including his confession of having killed someone, referencing the Texaco when talking about what he did, possessing cash and a new pistol that matched the description of the pistol stolen from the Texaco, and the timeline of his friends demonstrating that Appellant arrived at Lewis's apartment just after the robbery at the Texaco. References to Maya's being a good worker and wanting to learn about computers does not impact this evidence. Each of the statements cited by Appellant were short and, other than one oblique reference during closing arguments to Maya not being able to go on to college, were not addressed again after the testimony was admitted.

We hold that the amount of evidence supporting Appellant's conviction, the little connection that the challenged evidence had to the evidence supporting his conviction, and the bare amount of emphasis that the challenged evidence received indicates that the admission of the evidence did not affect Appellant's substantial rights or have a substantial and injurious effect or influence in determining the jury's verdict. *See* TEX. R. APP. P. 44.2(b); *see also Jones v. State*, No. 01-12-00555-CR, 2014 WL 1408100, at *4–6 (Tex. App.—Houston [1st Dist.] April 10, 2014, no pet.) (mem. op., not designated for publication) (holding multiple claimed victim-

character-evidence statements did not affect defendant's substantial rights given strength of evidence in support of conviction—including defendant's admission of the offense—and little emphasis of challenged statements).

We overrule Appellant's first issue.

Expert Testimony on Intent

In his second issue, Appellant argues the trial court abused its discretion by allowing a State's expert to testify about Appellant's intent.

A. Standard of Review

We review a trial court's admission of expert testimony for an abuse of discretion. *Ellison v. State*, 201 S.W.3d 714, 723 (Tex. Crim. App. 2006). We will not disturb a trial court's ruling absent a clear abuse of discretion. *Id.*

B. Analysis

At trial, the State questioned Baldwin, its expert witness on firearm identification. Baldwin has testified about "firearms identification and evaluation of firearms and functionality of firearms." In this trial, Baldwin testified that the bullet projectiles found in Maya were fired from either a .38 Special or a .357 Magnum cartridge, which are designed for use in revolvers. Baldwin identified the gun used in the robbery to be a revolver, based on the surveillance video. He testified about the difference between shooting with the gun cocked and without the gun cocked, explaining that a gun that has not been cocked requires more force to pull the trigger

and fire the bullet. He further testified that firing two bullets would require two separate pulls of the trigger.

After this was established, the following exchange occurred:

Q. What is it about this video in observing it that shows the intent of the robber?

[Defense Counsel]: Objection, Judge. That calls for a conclusion by the jury, invades the province of the jury and their fact-finding.

THE COURT: Response.

[Prosecutor]: Your Honor, I'm asking this individual based on his training and experience with firearms what the -- in the manner in which the robber fired, what could he say with regard to his training and experience, about the intention of that.

[Defense Counsel]: That would also call for speculation to get into the mind of the shooter. We object on those two bases.

THE COURT: Objection's overruled. You may answer the question.

A. Based on the way the individual in the video is extending his arm and pointing the firearm in the direction of the clerk, that would be consistent in my mind with someone wanting to strike or shoot the person who's at the other end.

Q. (By [Prosecutor]) Distance wise, would you say this is a fairly close distance to be shot?

. . . .

A. Yes, it does appear to be a close range.

Q. (By [Prosecutor]) From what you know of weapons and revolvers and .38 Special revolvers, can shooting in the torso of an individual cause death?

A. Yes.

Q. Can shooting in the back of an individual at this close range cause death?

A. Yes.

Q. Is the revolver that is used in this surveillance, is that a deadly weapon?

A. Yes.

On appeal, Appellant argues that this evidence was inadmissible because it drew an impermissible legal conclusion and because it was outside of Baldwin's area of expertise. The State argues that the latter complaint has not been preserved for appeal. We agree. To preserve a complaint for appeal, the complaining party must raise an objection and obtain a ruling. TEX. R. APP. P. 33.1(a). In addition, the objection at trial must comport with the complaint on appeal. *Bekendam v. State*, 441 S.W.3d 295, 300 (Tex. Crim. App. 2014). Appellant did not argue that the testimony in question was outside of Baldwin's expertise and, accordingly, cannot raise that complaint now. *See id.*

For the issue of whether Baldwin testified on a legal conclusion, we note that evidence of intent is rarely subject to direct evidence. *Hernandez v. State*, 819 S.W.2d 806, 810 (Tex. Crim. App. 1991). Instead, it typically is proven by circumstantial evidence surrounding the crime. *Sholars v. State*, 312 S.W.3d 694, 703 (Tex. App.—Houston [1st Dist.] 2009, pet. ref'd) (citing *Hernandez*, 819 S.W.2d at 810). "A jury may infer intent from *any facts* that tend to prove its

existence . . . ." *Id.* (emphasis added). Intent can be inferred from the use of a deadly weapon. *Id.* When a deadly weapon is used at close range, intent to kill is presumed. *Id.* Expert testimony can be used to show how certain actions support a showing of intent. *See Utomi v. State*, 243 S.W.3d 75, 82 (Tex. App.—Houston [1st Dist.] 2007, pet. ref'd) ("Expert testimony by experienced law enforcement officers may also be used to establish an accused's intent to deliver.").

Here, Baldwin did not testify that he knew Appellant's intent. Instead, the State elicited testimony about what evidence in the surveillance video of the shooting could support inferences of intent. Baldwin testified, based on his knowledge of firearms and how they are used, about what facts surrounding the shooting indicated an intent to commit murder. Baldwin testified that Appellant's extending his arm towards Maya, who had retreated to a corner away from Appellant, was consistent with someone intending to shoot that person. We hold the trial court did not abuse its discretion in allowing this testimony.

We overrule Appellant's second issue.

Conclusion

We affirm the judgment of the trial court.

Laura Carter Higley
Justice

Panel consists of Chief Justice Radack and Justices Keyes and Higley.

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