

Opinion issued June 29, 2017



In The  
**Court of Appeals**  
For The  
**First District of Texas**

---

NO. 01-16-00163-CR

---

**JOSEPH EDWARD WEBSTER, Appellant**  
V.  
**THE STATE OF TEXAS, Appellee**

---

**On Appeal from the 176th District Court**  
**Harris County, Texas**  
**Trial Court Case No. 1470226**

---

**MEMORANDUM OPINION**

Joseph Edward Webster was convicted of murder and sentenced to confinement for life.<sup>1</sup> The State's case rested primarily on three pieces of circumstantial evidence: (1) a mixture of DNA found under the complainant's

---

<sup>1</sup> See TEX. PENAL CODE § 19.02(b).

fingernails, from which Webster could not be excluded as a possible contributor; (2) a palm-print at the scene of the murder, which matched a print taken from Webster; and (3) the blood in which the palm-print was made, which indicated that Webster was at the scene when or shortly after the murder occurred. In two issues, Webster contends that (1) the trial court erred in denying his motion for a directed verdict and (2) there was insufficient evidence to support the jury's verdict. Viewing the evidence in the light most favorable to the jury's verdict, we hold that a rational jury could have found Webster guilty beyond a reasonable doubt. Therefore, we affirm.

### **Background**

In 2001, the body of Josephine Herbert was found in an alleyway in downtown Houston. According to the medical examiner, her manner of death was homicide and her cause of death was blunt force head trauma. Multiple sources of DNA were found on Herbert, and a bloody palm-print was recovered near her body. Then the case went cold.

Years later, Joseph Webster was identified as a suspect. His DNA and prints were analyzed and compared to the DNA and prints found on Herbert and at the scene of the murder. The police determined that Webster could not be excluded as a possible contributor to the DNA found underneath Herbert's fingernails and that Webster's left palm-print matched the bloody palm-print near Herbert's body.

Webster was indicted for murder, tried and found guilty by a jury, and sentenced to life in prison.

***Herbert's body is found, but the case goes cold***

On September 18, 2001, the body of Josephine Herbert was found underneath a dirty stairwell in the alcove of a gated, narrow alleyway between two restaurants in downtown Houston. Herbert's body was nude from the waist down, and she appeared to have been beaten to death with loose bricks and pieces of concrete lying next to her body. A crime scene investigator with the Houston Police Department's Homicide Division, Sergeant M. Holbrook, was called to the scene.

When Holbrook arrived, he observed blood spatter and impact marks on the wall near Herbert's head, bloody fingerprints and palm-prints on Herbert's legs, and a bloody palm-print on a metal pole at the end of the alcove. Holbrook called an HPD latent fingerprint examiner, D. Benningfield, to the scene to examine Herbert's body and the surrounding area for latent print evidence.

Benningfield was unable to recover the prints on Herbert's body. She was, however, able to recover the palm-print on the metal pole with the use of amido black—a staining dye used to enhance the visibility of bloody prints by staining the proteins in the blood blue, black, or purple. Benningfield sprayed the pole with amido black, which turned the print a dark blue-black color. She then

photographed the print and cut out the part of the pole with the print to preserve the evidence.

While Holbrook and Benningfield gathered physical evidence, another HPD homicide officer, Officer R. King, arrived at the scene and began looking for potential witnesses. King spoke with local homeless men and patrons of a local restaurant that Herbert was known to frequent. King learned that Herbert was a homeless prostitute who went by the name “Little Bit” and that she was seen the night before leaving the restaurant with two black males.

The day after Herbert’s body was found, the Harris County Medical Examiner’s Office<sup>2</sup> performed an autopsy. During the autopsy, the examiner collected vaginal swabs, fingernail clippings from Herbert’s right and left hands, and two sections of Herbert’s t-shirt that were stained with semen. The autopsy revealed that Herbert had facial and skull fractures, brain bleeding, and neck contusions. The examiner determined that Herbert’s manner of death was homicide and that her cause of death was blunt force head trauma.

Over the next several months, Officer King developed several suspects and leads, but they were all ruled out. Webster’s name never came up, and the case was eventually transferred to the HPD Homicide Division Cold Case Unit.

---

<sup>2</sup> The Harris County Medical Examiner’s Office is now called that Harris County Institute of Forensic Sciences.

*Years later, Webster is identified as a suspect, and his prints and DNA are compared to the prints and DNA from the scene of the crime*

In 2006, the items collected by the medical examiner (the fingernail clippings, vaginal swabs, and t-shirt stains) were sent to a private laboratory, Identigene, for DNA analysis. Identigene generated a DNA profile for each item.

The DNA profile for the right-hand fingernail clippings consisted of a DNA mixture with a major and a minor contributor. The DNA profiles for the other items consisted of DNA from a single contributor. Collectively, the items contained the DNA of at least two males and one female, although the female contributor could have been Herbert herself.

Later, in 2009, the DNA profiles generated by Identigene were searched against the Texas CODIS database.<sup>3</sup> The DNA profiles for two of the items matched the CODIS DNA profiles of two individuals. Specifically, the minor component of the DNA mixture profile from Herbert's right-hand fingernail clippings matched the CODIS DNA profile of Webster. And the DNA profile from one of the t-shirt stains matched the CODIS DNA profile of another man, Lorenzo Jones.

---

<sup>3</sup> CODIS stands for "Combined DNA Index System." The statewide database allows laboratories within the state to share information regarding DNA and other forensic evidence.

Webster and Jones were interviewed by the police. Webster admitted that he frequented various prostitutes in the downtown Houston area and that he might have had sex with Herbert. Webster denied that he killed Herbert or that he had ever been in the alleyway where her body was found. Jones admitted that he had once paid Herbert for oral sex, which she performed on him in front of a restaurant where the two had met. Like Webster, Jones denied that he killed Herbert.

In 2010, an HPD homicide officer in the Cold Case Unit, Officer M. Kral, began working on the case. Kral requested the HPD Crime Laboratory<sup>4</sup> to compare the bloody print found on the metal pole to a set of prints from 51 known individuals, including Webster and Jones. The HPD analysts reviewed the prints and did not identify any of the known individuals as the source of the bloody print.

Later, in 2011, a private forensic laboratory, Ron Smith & Associates, was asked to reexamine the set of 51 known prints. Like the HPD analysts, the Ron Smith analysts did not identify any of the known individuals as the source of the bloody print. The Ron Smith project manager in charge of the review, A. Steinmetz, explained at trial that both the bloody print and the set of Webster's prints used in the 2011 review were of poor quality, which contributed to Ron Smith's failure to identify Webster. Steinmetz further explained that, to make an identification, an analyst must "have enough information present in both the

---

<sup>4</sup> The HPD Crime Lab is now called the Houston Forensic Science Center.

known print and the latent print to determine that they came from the same source.”

In 2012, Sgt. Holbrook, who had not worked on the case since 2001, returned to HPD’s Homicide Division and learned that the case still had not been cleared. He reviewed the evidence, observed that Webster’s and Jones’s DNA had been found on Herbert, and instructed Ron Smith to reexamine their prints, believing that the bloody print was of sufficient quality to render an identification.

During the reexamination, the Ron Smith analyst saw similarities between the bloody print and Webster’s prints and asked HPD to obtain an additional, higher-quality set of prints from Webster. HPD obtained a new set of prints and provided them to Ron Smith. With the second set of prints, Ron Smith identified Webster as the source of the bloody print.

In 2013, Holbrook asked an HPD Crime Lab serologist, J. Rehfuss, to process two metal posts for blood and DNA. The first post had red-brown staining, and the second post had blue-black staining. Rehfuss saw the red-brown staining on the first post, which she identified as potential blood. She therefore tested the first post for blood but the test came back negative. Rehfuss saw the blue-black staining on the second post, but she did not know what it was and did not identify it as potential blood. Because she did not identify the blue-black staining as

potential blood, she did not test the second post for blood. Rehfluss also swabbed both posts for DNA but no DNA was detected on either post.

In June 2015, a DNA analyst with the Houston Forensic Science Center, D. Donley, compared a sample of Webster's DNA to the DNA profiles that were generated by Identigene in 2006. Donley confirmed that Webster could not be excluded as a possible contributor to the minor component of the DNA mixture underneath Herbert's right-hand fingernail clippings. According to Donley's analysis, the probability that a randomly chosen unrelated individual would be included as a possible contributor to the minor component of this DNA mixture was approximately 1 in 230 for African-Americans. Webster was excluded as a possible contributor to the DNA profiles from the other items.

Later, in August 2015, the Houston Forensic Science Center generated its own DNA profile from Herbert's right-hand fingernail clippings using a DNA testing kit that was more advanced than the one used by Identigene in 2006. Donley compared this second DNA profile to a new sample of Webster DNA. At Webster's request, Donley's comparison was observed by an independent third party. Donley again confirmed that Webster could not be excluded as a possible contributor to the DNA mixture underneath Herbert's right-hand fingernail clippings. According to Donley's second analysis, the probability that a randomly



chosen unrelated individual would be included as a possible contributor to this DNA mixture was approximately 1 in 68 million for African-Americans.

***Webster is indicted, tried, and convicted***

As a result of the DNA found underneath Herbert's fingernails and the identification of Webster as the source of the bloody palm-print, Webster was indicted and tried for Herbert's murder. At the end of the State's case-in-chief, Webster moved for a directed verdict. Webster argued that the State had presented insufficient evidence for a jury to find him guilty of murder. The trial court overruled Webster's motion. At the end of the trial, the jury found Webster guilty, and the trial court sentenced him to life in prison. Webster appeals.

**Sufficiency of the Evidence**

In two issues, Webster contends that (1) the trial court erred in denying his motion for a directed verdict and (2) there was insufficient evidence to support the jury's verdict. Because a challenge to a trial court's ruling on a motion for a directed verdict is actually a challenge to the legal sufficiency of the evidence to support the conviction, *Canales v. State*, 98 S.W.3d 690, 693 (Tex. Crim. App. 2003), we will consider Webster's issues together, as a single challenge to the sufficiency of the evidence.

### A. Standard of review

When reviewing the sufficiency of the evidence, we view all the evidence in the light most favorable to the verdict to determine whether any rational factfinder could have found the essential elements of the offense beyond a reasonable doubt. *Jackson v. Virginia*, 443 U.S. 307, 318–19, 99 S. Ct. 2781, 2788–89 (1979); *see Adames v. State*, 353 S.W.3d 854, 859 (Tex. Crim. App. 2011) (holding that *Jackson* standard is only standard to use when determining sufficiency of evidence); *Nelson v. State*, 405 S.W.3d 113, 122 (Tex. App.—Houston [1st Dist.] 2013, pet. ref'd). The jury is the exclusive judge of the facts and the weight to be given to the testimony. *See Bartlett v. State*, 270 S.W.3d 147, 150 (Tex. Crim. App. 2008). A jury, as the sole judge of credibility, may accept one version of the facts and reject another, and it may reject any part of a witness's testimony. *See Sharp v. State*, 707 S.W.2d 611, 614 (Tex. Crim. App. 1986); *see also Henderson v. State*, 29 S.W.3d 616, 623 (Tex. App.—Houston [1st Dist.] 2000, pet. ref'd) (“Even when a witness's testimony is uncontradicted, the jury can choose to disbelieve a witness.”).

We afford almost complete deference to the jury's credibility determinations. *Lancon v. State*, 253 S.W.3d 699, 705 (Tex. Crim. App. 2008). We may not re-evaluate the weight and credibility of the evidence or substitute our judgment for that of the factfinder. *Williams v. State*, 235 S.W.3d 742, 750 (Tex.

Crim. App. 2007). Rather, we determine “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.” *Jackson*, 443 U.S. at 319, 99 S. Ct. at 2789; *Thornton v. State*, 425 S.W.3d 289, 303 (Tex. Crim. App. 2014). We resolve any inconsistencies in the evidence in favor of the verdict. *See Curry v. State*, 30 S.W.3d 394, 406 (Tex. Crim. App. 2000); *see also Clayton v. State*, 235 S.W.3d 772, 778 (Tex. Crim. App. 2007) (“When the record supports conflicting inferences, we presume that the factfinder resolved the conflicts in favor of the prosecution and therefore defer to that determination.”).

Circumstantial evidence is as probative as direct evidence in establishing guilt, and circumstantial evidence alone can be sufficient to establish guilt. *Sorrells v. State*, 343 S.W.3d 152, 155 (Tex. Crim. App. 2011); *Clayton*, 235 S.W.3d at 778. “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). “Evidence is legally insufficient when the ‘only proper verdict’ is acquittal.” *Nelson v. State*, 405 S.W.3d 113, 122 (Tex. App.—Houston [1st Dist.] 2013, pet. ref’d) (quoting *Tibbs v. Florida*, 457 U.S. 31, 42, 102 S. Ct. 2211, 2218 (1982)).

## **B. Legal sufficiency review**

The trial court's charge instructed the jury to find Webster guilty of murder upon finding that Webster "unlawfully, intentionally or knowingly" caused Herbert's death by striking her with a piece of concrete or by striking her head into a brick wall.

The State presented evidence that:

- Herbert was a prostitute who worked downtown and that Webster admitted to possibly having sex with her;
- Herbert's body was found in a narrow and secluded gated alleyway that would not normally be used by the public—a location where someone might reasonably be expected to lure a prostitute he intended to kill;
- the DNA underneath Herbert's fingernails was Webster's—indicating that Herbert attempted to defend herself from Webster or at least had direct physical contact with him before she died;
- the palm-print found next to Herbert's bloody body was Webster's—placing Webster at the scene of the crime, crouched right in front of the narrow stairwell and Herbert's body; and
- the palm-print was made in blood—indicating that Webster moved or had some sort of contact with Herbert's body after she was dead.

Despite this evidence and the reasonable inferences drawn from it, Webster contends that there is legally insufficient evidence to convict him of murder. According to Webster, the evidence is legally insufficient because the State's three key pieces of physical evidence—the DNA underneath Herbert's fingernails, the palm-print next to Herbert's body, and the blood in which the palm-print was

made—do not actually show that he murdered Herbert. We consider each piece of evidence in turn.

### **1. The DNA**

Webster contends that the DNA found underneath Herbert’s right-hand fingernail clippings does not indicate that he murdered Herbert.

Webster contends that the State obtained the evidence by using an unreliable and outdated method of DNA analysis. Webster’s argument suffers from numerous problems. First, he did not raise this objection to the trial court. Webster’s attack on the reliability of the DNA evidence is based on articles from science journals, online newspapers, and other sources outside the record, none of which we may consider on direct appeal. TEX. R. APP. P. 34.1. Second, Webster has not explained why the State’s DNA analysis was not reliable or how the results of his proposed alternative analysis would have been any different. So even if Webster’s argument were properly before us, he has failed to adequately brief it in this appeal. Finally, to the extent Webster contends that the DNA evidence must be analyzed under a newer, more accurate method, the proper vehicle for making such an argument would be a motion for post-conviction DNA testing, which Webster has not filed. TEX. CODE CRIM. PROC. art. 64.01(b)(2).

Webster next complains that the State failed to adequately inform the jury of the “complexities” of analyzing a DNA mixture like the one found underneath

Herbert's right-hand fingernails. According to Webster, had the jury been so informed, it would not have convicted him. Informing the jury of potential issues with the State's method of DNA analysis was not the State's responsibility; it was Webster's. Webster cannot complain that the State failed to attack and rebut its own evidence.

Finally, Webster argues that, assuming the DNA evidence is reliable, the DNA found on Herbert's right-hand fingernail clippings does not indicate that Webster murdered her, but rather only indicates that Webster had contact with Herbert sometime before she died, possibly through consensual sex. Webster notes that at least one other man's (Jones's) DNA was found on Herbert and that he (Webster) was only the minor contributor to the DNA found underneath Herbert's fingernails. According to Webster, these facts underscore that his DNA is not probative of his guilt. We disagree.

Although Sgt. Holbrook admitted that DNA found underneath a homicide victims' fingernails could be from consensual sex, he also testified that, in his experience, such evidence generally indicates that the victim was attempting to defend herself or in some sort of altercation. Thus, the location of Webster's DNA is probative of Webster's guilt—it indicates that Herbert attempted to defend herself from him, which, in turn, indicates that their contact was not limited to consensual sex. Further, the DNA evidence is not considered in isolation. Rather, it

is considered together with the other evidence, including Webster's palm-print found next to Herbert's bloody body; the blood in which the palm-print was made; and Jones's testimony that he paid Herbert for oral sex, which would explain why his DNA was found on her t-shirt.

Donley testified that she compared the DNA profile from Herbert's right-hand fingernail clippings to samples of Webster's DNA twice. The first time, Webster could not be excluded as a possible contributor to the minor component of the DNA mixture, and the probability that a randomly chosen unrelated individual would be included as a possible contributor was 1 in 230 for African-Americans. The second time, Donley used a new sample of Webster's DNA, and her testing was observed, at Webster's request, by an independent third party. Again, Webster could not be excluded as a possible contributor to the minor component of the DNA mixture, and the probability that a randomly chosen unrelated individual would be included as a possible contributor was 1 in 68 million for African-Americans.

Viewing the evidence in the light most favorable to the jury's verdict, we hold that a rational jury could have found that the DNA found on Herbert's right-hand fingernail clippings was from Webster and that it was probative of Webster's guilt.

We next consider the palm-print found next to Herbert's body.

## **2. The palm-print**

Webster contends that the palm-print does not support a finding that he murdered Herbert.

Webster first argues that a rational jury could not have found that he was the source of the print because Ron Smith's second review of the prints, in which Ron Smith identified Webster, was tainted by cognitive bias. The HPD and Ron Smith failed to identify Webster as the source of the print in their initial reviews of the prints. Ron Smith identified Webster only after Webster's DNA was found on Herbert. Thus, Webster contends, Ron Smith's second review was biased. In fact, Webster argues, because they were informed of the potential DNA match, the Ron Smith analysts, and Steinmetz in particular, were necessarily biased. But whether the Ron Smith analysts were biased was a credibility determination for the jury, which could have reasonably believed the State's account of why HPD and Ron Smith initially failed to identify Webster.

At trial, A. Steinmetz, the Ron Smith project manager in charge of the review of the prints, explained why Ron Smith initially failed to identify Webster. She testified that the poor quality of both the bloody palm-print and the original set of Webster's prints contributed to Ron Smith's failure to make an identification. Steinmetz also explained the steps Ron Smith took to ensure that the second review was accurate and unbiased. Steinmetz testified that, after the analyst identified



Webster, his conclusion was verified by at least one other analyst and then by her. Steinmetz testified that the Ron Smith analysts who made the initial identification and verification were not informed that Webster's DNA had been found on Herbert. She testified that the identification was based in part on a second, higher quality set of prints from Webster, which the analysts had requested after observing sufficient similarities between the bloody print and the first set of Webster's prints. She verified the identification of Webster again right before trial, and her second identification was again verified by another analyst. And she further testified that the ridges on a person's palms create a unique print, establishing that a palm-print is a reliable form of identification.

The jury was free to accept Steinmetz's testimony and draw reasonable inferences about the reliability of Ron Smith's identification. We hold that a rational jury could have found that Webster was the source of the palm-print even though HPD and Ron Smith failed to identify him in their initial reviews.

Webster next argues that a rational jury could not have found that Webster was the source of the print because Webster's DNA was not found on the print when it was processed by HPD's serologist, J. Rehfuss. According to Webster, "[w]ith the alleged palm print in blood, there should [have been] contact DNA from the owner of the blood or contact DNA from the owner of the palm print." We disagree.

Holbrook and Benningfield both testified that the palm-print appeared to be blood and that it was sprayed with amido black. They further explained that when amido black is sprayed on a bloody print, it causes a chemical reaction that dyes the proteins in the blood and destroys the DNA. So the downside to processing evidence for prints with amido black is that it prevents investigators from processing the same evidence for DNA. As Holbrook testified, when the murder occurred in 2001, “[y]ou could either recover print evidence or you could recover DNA evidence, but the technology didn’t exist back then to do both.” The police “had to pick at the time.” Thus, Webster’s statements that there should have been DNA on the print is contradicted by Holbrook’s and Benningfield’s testimony that the print was sprayed with amido black. Viewing the evidence in the light most favorable to the jury’s verdict, we hold that a rational jury could have found that Webster was the source of the palm-print even though none of his DNA was found on it.

Finally, we consider the blood in which the palm-print was made.

### **3. The blood**

Webster argues that a rational jury could not have found that the print was blood because Rehfuss did not identify the print as blood when she processed the two pieces of metal post for blood and DNA. Webster contends that Rehfuss “testified multiple times that the matter on the metal post was not blood . . . .”

Rehfuss testified that she processed two metal posts for blood. She explained that she tests an item for blood in two steps. First, she inspects the item for red-brown staining. Then, if she observes any such staining, she tests the item for blood. Rehfuss testified that the first post had red-brown staining and that she therefore tested it for blood and that the test came back negative. Rehfuss further testified that the second post had dark blue-black staining that she did not identify as potential blood and therefore did test to determine whether it was blood.

Webster contends that, based on this testimony, a rational jury could not have found that the palm-print was actually blood. And if a rational jury could not have found that the palm-print was blood, Webster argues, then it could not have found that the palm-print is evidence that he murdered Herbert. We disagree.

Webster's argument ignores the testimony of Holbrook, Benningfield, and Steinmetz, all of whom explained that the palm-print appeared to be blood based on its reaction to the amido black. Holbrook and Benningfield observed that the palm-print found on the metal post near Herbert's body appeared to be blood. Benningfield testified that when she sprayed the print with amido black, the print reacted like it was blood and turned a dark blue-black color. Steinmetz likewise testified that, based on her training and experience, the print on the second post appeared to have been sprayed with amido black and appeared to have reacted to the amido black as though it were blood.

From this testimony, a rational jury could have reasonably inferred that the palm-print was blood and that is why it turned blue-black when sprayed with amido black. A rational jury could have further found that Rehfuss overlooked the effect of amido black and therefore failed to identify the blue-black staining as potential blood when she processed the two metal posts years later.<sup>5</sup> Viewing the evidence in the light most favorable to the jury's verdict, we hold that a rational jury could have found that the bloody palm-print—which appeared to be blood, reacted to amido black like it was blood, and was next to Herbert's bloody body in a narrow alley spattered with blood—was in fact blood.

Webster's DNA under Herbert's fingernails and Webster's bloody palm print near Herbert's body, considered together with the secluded location of Herbert's body and Webster's admission to possibly having sex with her, constitutes sufficient evidence for a rational jury to find Webster guilty of murder. We overrule Webster's first and second issues.

---

<sup>5</sup> Assuming a rational jury could not have found that the palm-print was blood, it still could have found that the palm-print was Webster's, which would place Webster at the scene of the murder.

## **Conclusion**

We affirm the trial court's judgment.

Harvey Brown  
Justice

Panel consists of Chief Justice Radack and Justices Brown and Lloyd.

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