

Opinion issued February 22, 2018



In The
Court of Appeals
For The
First District of Texas

NO. 01-16-00282-CR

RAFAEL AUGUSTIN QUINTANILLA, Appellant
V.
THE STATE OF TEXAS, Appellee

On Appeal from the 263rd District Court
Harris County, Texas
Trial Court Case No. 1404219

MEMORANDUM OPINION

Appellant Rafael Augustin Quintanilla was convicted of capital murder while in the course of committing and attempting to commit a robbery. *See* TEX. PENAL CODE § 19.03(a)(2). The trial court assessed punishment at life imprisonment, without the possibility of parole. In his sole issue, Quintanilla contends that the trial

court committed reversible error by failing, on its own initiative, to give a jury instruction that the testimony of an accomplice witness needed to be corroborated. We affirm.

Background

Because the analysis of this appeal requires the consideration of the sufficiency of evidence apart from the testimony of an alleged accomplice, the initial recitation of the record evidence excludes that testimony.

In September 2013, complainant Billy Chatman was shot and killed in his apartment in Houston, Texas. The police charged the appellant, Rafael Augustin Quintanilla, with capital murder, alleging that he intentionally shot Chatman in the course of robbing and attempting to rob him. Quintanilla pleaded not guilty and the case proceeded to a jury trial.

At trial, the State presented multiple witnesses including Chatman's roommate, Shantel Morris. Morris testified that on the day Chatman was shot, she was in her bedroom when she heard a bang and then a popping sound. She went to the door of her room and was met by a man with a gun in his hand. Morris testified that she saw only one man, who she saw face-to-face. She stated that he was pointing and waving the gun, and she "heard the clicking of the trigger, but it didn't go off." She then pushed the door closed and unsuccessfully tried to go out a window. She then went inside a closet, called 911, and waited until police arrived. Morris met

with police about two weeks after the home invasion, and she identified a photograph of Quintanilla from a photo array as the person she saw in her room with the gun.

Chatman's neighbors Mary Nealy, Rhoeniesia Nealy, and Marcus Nealy also testified. They all testified that on the day of Chatman's murder, they saw two men enter his apartment together. They all testified to hearing a gunshot and then seeing the two men leave Chatman's apartment together. Marcus testified that after the two men left, he went into the apartment where he found Chatman on the floor with a bullet wound to his head. Mary then called 911. About two weeks later, Mary and Rhoeniesia identified Quintanilla from a photo array as one of the two men they saw entering and exiting Chatman's apartment.

Quintanilla also testified. He stated that on the day Chatman was shot, Johnny Carillo picked him up from a crack house to take him to buy Xanax pills. According to Quintanilla, Arthur Luna and Jessica Alvarado—the alleged accomplice witness—were already in Carillo's car when he got in. Quintanilla noted that Luna previously had threatened him with a gun and they had a "beef." He testified that he knew Luna to carry a gun, but had no idea that he had brought a gun that day. According to Quintanilla, Carillo drove them to Chatman's apartment to buy Xanax. Quintanilla admitted that he and Luna went into Chatman's apartment together. He testified that he returned to the car after a few seconds to see if Alvarado had her money ready for Luna to purchase pills for her. Quintanilla testified that when he

returned to the apartment, Luna was pointing a gun at Chatman. He said that Chatman lunged to grab the gun, and then the two men started wrestling for the weapon. Quintanilla testified that he heard gunfire and Chatman fell to the ground. Luna then searched Chatman and retrieved a bottle of pills before searching the room.

Quintanilla testified that he told the police that Luna had a gun and told him where to move. He also told the police that he and Luna were face-to-face with Shantel Morris when she opened the door to her room and that he stepped into her room. Quintanilla testified that Luna asked him, "Who's in there?" He responded that there was a girl in the room. According to Quintanilla, he and Luna then left and returned to the car.

Jessica Alvarado, the alleged accomplice witness, was a passenger in the car when Quintanilla and Luna arrived at and left Chatman's apartment. Alvarado testified that she had known Quintanilla for a couple of months before that date because she and her boyfriend, Carillo, would sell him drugs. Alvarado testified that on that day, Quintanilla called Carillo asking for drugs. Carillo drove them to meet Quintanilla. When they arrived, he was with Luna, whom she had known since her youth. Alvarado testified that she did not know Luna would be there.

When they arrived, Quintanilla asked them for a ride to go pick up Xanax. Quintanilla and Luna got in the back seat of the car. Quintanilla directed Carillo to

Chatman's residence. After they arrived at an apartment complex, Luna and Quintanilla exited the car, walked over to a man, and went inside his apartment. Alvarado and Carillo waited in the car for about five minutes until Quintanilla and Luna returned to the car. Quintanilla then told Carillo: "Go, because I got him for his bars." Alvarado understood that to mean that Quintanilla had robbed the man selling Xanax. Carillo drove away and returned Quintanilla and Luna to where he had picked them up.

Alvarado testified that she did not know that Quintanilla or Luna was going to rob or kill Chatman, or that either of them had a gun. She did not find out that Chatman had been shot until one or two days after the incident. Alvarado testified that she and Carillo gave initial statements to the police in which they identified Quintanilla, but not Luna. She explained that she was scared of Luna and felt threatened by him because he knew her family and where she lived, while she did not know Quintanilla, and he did not know anything about her. Alvarado testified that two days later she and Carillo met with police a second time and identified Luna.

The jury found Quintanilla guilty of capital murder, and he appeals.

Discussion

Although his lawyer did not request an accomplice-witness instruction, Quintanilla asserts in his sole issue that the trial court erred by failing to give such an instruction about Alvarado on its own initiative.

Because Quintanilla did not request an accomplice-witness instruction, we must first determine whether the trial court erred in failing to give it on its own initiative. *Zamora v. State*, 432 S.W.3d 919, 922 (Tex. App.—Houston [14th Dist.] 2014, no pet.). An accomplice is defined as an individual who, under the evidence, could have been charged with the same or lesser-included offense as that with which the defendant was charged. *Zamora v. State*, 411 S.W.3d 504, 510 (Tex. Crim. App. 2013). Under a party-conspirator theory of accomplice liability, an individual is an accomplice when the evidence establishes that she and the defendant were co-conspirators to commit a felony other than the one with which the defendant is charged, and in furtherance of the unlawful purpose, the accused commits another felony “that should have been anticipated as a result of the carrying out of the conspiracy.” TEX. PENAL CODE § 7.02(b); *Zamora*, 411 S.W.3d at 511.

“A proper accomplice-witness instruction informs the jury either that a witness is an accomplice as a matter of law or that he is an accomplice as a matter of fact.” *Zamora*, 411 S.W.3d at 510. If one is susceptible to prosecution for the offense charged against the accused or a lesser included offense, that individual is an accomplice as a matter of law. *Id.* “The trial court is under no duty to instruct the jury unless there exists no doubt or the evidence clearly shows that a witness is an accomplice witness as a matter of law.” *Green v. State*, 495 S.W.3d 563, 570 (Tex. App.—Houston [1st Dist.] 2016, pet. ref’d) (quoting *Paredes v. State*, 129 S.W.3d

530, 536 (Tex. Crim. App. 2004)). “Faced with conflicting or inconclusive evidence as to whether a witness is an accomplice, the trial judge must instruct the jury first to decide the question, and then, if the jury determines that the witness is an accomplice, to apply the corroboration requirement.” *Zamora*, 432 S.W.3d at 922.

Quintanilla asserts that the trial court erred in failing to instruct the jury that Alvarado was a co-conspirator accomplice as a matter of law and, thus, the jury could only consider her testimony if it was sufficiently corroborated by other evidence tending to connect him to the offense. In the alternative, Quintanilla argues that, at a minimum, there was a fact issue as to whether Alvarado was a co-conspirator accomplice and the trial court erred in failing to give an instruction on its own initiative that the jury could find that she was an accomplice. The State responds that the trial court did not err in failing to provide an accomplice-witness instruction because Alvarado was not a co-conspirator accomplice as that term is defined by law.

Quintanilla argues that Alvarado was a co-conspirator accomplice because she agreed to take him and Luna to buy Xanax and by doing so she conspired to commit a felony. He further reasons that Chatman’s murder was committed in furtherance of the drug transaction, and Alvarado should have anticipated it. *See* TEX. PENAL CODE § 7.02(b); *Zamora*, 432 S.W.3d at 922. He concedes that possession of under 28 grams of Xanax, or alprazolam, is a Class A misdemeanor, but he argues that

Chatman’s apartment was “within 1000 feet of . . . real property that is owned, rented or leased to a school,” which would escalate the crime to a felony offense. *See* TEX. HEALTH & SAFETY CODE §§ 481.104(a)(2), 481.117(b), 481.134(e)(1).

At trial, the State offered into evidence a diagram and a map of the area near Chatman’s apartment, which included Yates High School. The State also submitted surveillance video footage from the school which captured an image of the getaway vehicle turning onto a nearby street. Quintanilla argues that, based on the surveillance footage, one reasonably could deduce that Chatman’s apartment was within 1,000 feet of the high school.

We cannot conclude that the evidence clearly shows that Alvarado conspired with Quintanilla to commit the felony offense of purchasing Xanax in a drug-free zone, such that she should be considered a co-conspirator accomplice as a matter of law. *See Green*, 495 S.W.3d at 570. Neither party offered any testimony or evidence about the actual distance from Yates High School to Chatman’s apartment. Quintanilla also did not raise the issue in the trial court. The map, diagram, and video footage upon which Quintanilla relies in support of his argument are meaningless without some evidence of scale or actual distance. Thus, we cannot conclude that the trial court erred by failing, on its own initiative, to instruct the jury that Alvarado was a co-conspirator accomplice. *See* TEX. HEALTH & SAFETY CODE §§ 481.104(a)(2), 481.117(b); *see also U.S. v. McCall*, 553 F.2d 821, 831–34 (5th

Cir. 2008) (holding that the sufficiency of evidence establishing a 1,000-foot distance depended on “whether there exists *any* evidence of *any* distance that is sufficiently accurate and probative to convince a reasonable trier of fact” and concluding that an aerial photograph without scale and layperson testimony estimating distance were insufficient to establish a 1,000-foot distance (emphasis in original)).

In the alternative, Quintanilla argues that there was a fact issue as to whether Alvarado was a co-conspirator accomplice and the trial court erred by failing to instruct the jury that it could so find. The State responds that there is no evidence to show that Alvarado conspired to commit a felony or that she reasonably should have anticipated Chatman’s murder.

A trial court must instruct the jury to determine if an inculpatory witness is an accomplice as a matter of fact if the evidence is conflicting such that it is not clear whether the witness was an accomplice. *Green*, 495 S.W.3d at 570. But despite Quintanilla’s testimony that Alvarado intended to buy Xanax from Chatman—without more, a misdemeanor offense—there is no evidence that the alleged offense occurred in a drug-free zone, escalating it to a felony. Because there is no evidence on this issue, Quintanilla failed to raise a question of fact as to whether Alvarado was a co-conspirator accomplice. *See id.*

For these reasons, and in the absence of a request at trial by Quintanilla, we conclude that the trial court did not err by failing to instruct the jury that it could find that Alvarado was an accomplice as a matter of fact.

We overrule Quintanilla's sole issue.

Conclusion

We affirm the judgment of the trial court.

Michael Massengale
Justice

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

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