Opinion issued October 8, 2020

In The

Court of Appeals

For The

First District of Texas

NO. 01-19-00076-CR

CURTIS LEE HOLLIMAN, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the 178th District Court
Harris County, Texas
Trial Court Case No. 1615491

MEMORANDUM OPINION

Curtis Lee Holliman appeals his conviction for murder. TEX. PENAL CODE § 19.02(b). He was sentenced to 40 years' imprisonment. In two issues, he argues that the evidence was factually insufficient to support the jury's rejection of his insanity defense and that the trial court erred by excluding evidence. We affirm.

Background

Holliman lived in a house owned by Kirby Taylor. Holliman lived with Taylor's adult son. In January 2016, after a brief discussion with Taylor and his son, Holliman threw gasoline on them and lit them on fire. The son suffered fatal injuries and died later that day. Though Taylor was set on fire, he was able to leave the house and survived his injuries. Holliman was charged with murder and pleaded not guilty by reason of insanity. He proceeded to a jury trial.

The jury heard from Arthena Peavey, who was Holliman's friend and fellow church member. On the morning of the incident, they communicated by phone and text when Peavey inquired if Holliman wanted to go to lunch. They did not make plans for lunch, and Peavey went to work. Holliman called her in the afternoon and said that he needed to talk to someone and that he needed a ride. Peavey thought it was odd, as he had never made such a request before. Sensing something was wrong, she got permission from her manager to leave her job early. Holliman instructed Peavey to drive and meet him on the University of Houston main campus. She picked him up on a street corner, and Holliman told her that he was afraid because people were after him. She thought he seemed scared and frantic. He told her that he needed to get away from Taylor and his son and expressed interest in going to his family's home in Virginia. She began driving him to the airport at his request. Holliman seemed jittery when he heard sirens. When they arrived at the airport, they parked

in a parking lot while Holliman called someone who could help him purchase a plane ticket to Virginia. After a few hours, Peavey took Holliman to an airport hotel. She paid for the room because he claimed he did not have any money. They stayed in the room for a while, and Holliman talked about how he was afraid of Taylor. Holliman seemed calmer when she left, but she remained curious about what was going on with him.

When Peavey returned to work later that afternoon, she saw a news article online about a house fire in Houston. She believed the house looked like the one where Holliman lived. She called Holliman to see if he would tell her more about what happened, but he did not do so. Peavey called the police and informed them that she believed Holliman might have set the fire because he had told her that things had escalated between him, Taylor, and Taylor's son. She advised the police that Holliman could be found at the airport hotel.

Kirby Taylor testified that he met Holliman around 2008. He testified that they developed a close friendship, admitting that other people had said they were in an intimate relationship. Their relationship was good at first. They had been on trips together, and Taylor had traveled to meet Holliman's family. He admitted he was financially supporting Holliman, including purchasing a Lexus for him. In 2009, Holliman moved in with Taylor. In 2015, Holliman's personality changed, and he became mean and confrontational. Holliman would argue about problems in his

personal life and at school. Taylor moved out of the house but allowed Holliman to continue living there. He was worried that Holliman would damage the house if asked to move. A few months later, Taylor's adult son moved into the house.

On the day of the incident in January 2016, Taylor stopped by the house in the morning. He testified that he regularly stopped by every few days. When he walked in, he went to the kitchen and noticed that, though there was nothing cooking, three burners on the gas stove were on and only one had fire coming out of it. He thought it was odd and quickly turned off all the burners. He returned to the front door and unlocked the metal storm door. He testified that Holliman had come inside behind him and locked the door, and Taylor felt "bad vibes." He wanted the door unlocked in case he needed to leave quickly.

Taylor sat on the arm of a chair in the living room. Holliman approached Taylor and accused Taylor's son, who was 45 years old at the time, of tearing pages out of his textbooks. Taylor responded that he would instruct his son not to do that. Taylor testified that he did not believe Holliman so he attempted to placate him by saying he would talk to his son.

A few minutes later, Taylor's son joined them in the living room. Holliman told them that someone was stalking his family in Virginia. Taylor described Holliman's demeanor as controversial and unpleasant. Taylor's son looked up at his father and smiled. Holliman asked them if they thought it was funny and

immediately ran up the stairs. Within seconds, Holliman returned with a container in his right hand and a lighter in his left hand. Taylor said, "Don't do that!" as Holliman threw a liquid from the container on Taylor and his son and lit them both on fire. Taylor saw fire on his son's face and most of his body. His son was not wearing a shirt at the time. Taylor's pants, legs, and shirt were burning. He was able to take off his burning clothes and attempted to lead his son out of the house using the sound of his voice. The son did not make it out of the house because he collapsed in the doorway.

The jury heard from responding paramedics that Taylor's son had third-degree burns over most of his body. When he arrived at the hospital, he immediately received palliative care due to the extent of his burns. He was conscious when they arrived at the hospital but died after a few hours. The jury also heard from the doctor who performed the autopsy who concluded that the death was a homicide.

An arson investigator reviewed the scene. He recovered physical evidence, including samples from burned armchairs, a can of paint thinner, a barbeque lighter, and human skin in the living room and dining room. His analysis showed a substance like gasoline on the right side of an armchair and on Taylor's shoes and belt.

The jury also viewed a video taken from a neighbor's surveillance camera. The video showed the events at Taylor's house from 10:46 a.m. on the day of the murder through emergency personnel arriving to fight the fire. It showed Holliman

arriving, meeting up with Taylor on the front steps, and both going inside. Then, at 10:54 a.m., Taylor came out of the front door for a water hose. He had a burned collar on his shirt, most of his shirt had burned off, and his arms appeared darkened. The video showed Holliman leaving in a hurry after the fire started. By 11:00 a.m., the fire was visible from across the street, and a firetruck pulled up minutes later.

Holliman testified in his own defense. He testified that he had been depressed from a young age, including seeking psychiatric treatment. He had been bullied as a child because he was gay, and he had attempted suicide. After high school, he moved from Virginia to Houston to attend college, and he joined a church where Taylor was a member. He initially met Taylor at a church event, and later Taylor represented him in a criminal case, including visiting him while he was confined to a drug treatment facility. When he was released, Holliman moved in with Taylor. He testified that they were in a relationship that lasted for about 10 years. At first the relationship went well, and they traveled to visit Holliman's friends and family. During the relationship, Holliman suffered from depression after several of his family members died.

Holliman testified that he first took Adderall in April 2012. He obtained the prescription from a community clinic, and he used the drug to help him focus on school. He also saw a doctor near his college campus for a second prescription, and he began seeing a counselor at school to discuss his relationship with Taylor. He

went back and forth to Virginia in an attempt to get away from Taylor, but he always returned. Holliman testified that he smoked "a lot" of marijuana.

Holliman agreed that he was a hostile roommate shortly before the incident, but he stated that it was because he wanted more from his relationship with Taylor. Holliman testified that Taylor's son ate his food without asking, washed his clothes so that they faded, and took his car keys and permanently lost them. According to Holliman, shortly before the incident, Taylor sent threatening people to the house, including a security guard who demanded keys to the back door. On one occasion, Taylor's nephew from Illinois showed up unannounced at the house and was confrontational. Holliman called the police, but by the time they arrived the nephew had left. Holliman also testified that Taylor was leaving money for him at stop signs, in restaurants, and at convenience stores.

Holliman testified that in the months leading up to the incident, he was hallucinating and paranoid. He reached out to government officials, including the White House, to report that someone was threatening his family in Virginia. He believed every person was out to get him and that every sign, message, or news broadcast was directed at him. He continued going to school and work, but he was not focused. He started to think that he was the Messiah. In the days before the incident, he was afraid to go to local police because he believed that Taylor, as an attorney, had influence over them. He began keeping gasoline in his car for

protection in case he was attacked. He also attempted to purchase a firearm but was unsuccessful.

A few days before the incident, he brought the gasoline from the car into his room and kept it in a small refrigerator. On the day of the incident, he took 30 milligrams of extended release Adderall, and he was packing his car when Taylor arrived. He told Taylor and his son about the threats to his family in Virginia, they laughed, and he "lost it." His mind went blank, and he leaped up the stairs for the gasoline. He ran back down, threw gasoline on both Taylor and his son, and lit Taylor on fire. The flames reached the son and ignited him.

Holliman ran back up the stairs, afraid Taylor would do something to his family. He climbed out an upstairs window and drove to school. When he got to school, he called his family to check on them and eventually got in touch with two friends. He asked one of the friends to buy him a plane ticket to Virginia, and he called Peavey to ask for a ride to the airport. He testified that he did not drive himself to the airport because adrenaline would have made it impossible.

On cross-examination, Holliman admitted that he was very angry with Taylor in the days leading up to the incident, including when he saw him arrive at the house that day. He also admitted that, though his mind was blank when he ran upstairs for the gasoline, threw it, and ignited it, he could remember exactly what he had done that day. Holliman admitted that he received multiple Adderall prescriptions from

different doctors and that the doctors did not know about one another. He continued to ask for increases in his dosage. At the time of the incident, he was taking four times his prescribed dosage of Adderall while smoking marijuana multiple times a day. He testified that he averaged about 20 "hits" from a bong daily. He also took more than his prescribed amount of human growth hormone. He testified that he was prescribed one vial per day, but he used three or four vials each day. The combination increased his paranoia. He admitted that he chose to take more than his prescribed amounts of medication and to use marijuana. He also admitted that he was angry with Taylor.

When the State reviewed reports from psychiatrists who had interviewed Holliman leading up to trial, Holliman testified that one of the doctors had lied in his report. He did not remember telling the doctor that on the day of the event he was paranoid and drove to his college because he knew police would be looking to take him to jail.

Holliman's sister testified that Holliman was in a relationship with Taylor. She had met Taylor on multiple occasions, including when he visited Virginia and when she visited Houston. Over time, Holliman began acting paranoid and afraid. He would call his family in Virginia and tell them to check under their cars and not to let their children go outside. In the days before the incident, he sent police to his mother's house to do a welfare check. Holliman called his sister on the day of the

fire. She described his demeanor as frantic and incoherent because he thought he was being followed. Holliman's mother also testified, and her testimony was similar to her daughter's.

To support his insanity defense, Holliman called Dr. Michael Fuller, a psychiatrist at the University of Texas Medical Branch in Galveston, to testify as a mental health expert. Dr. Fuller interviewed Holliman twice, and he opined that Holliman had a form of bipolar disorder that had worsened in recent years. He believed Holliman was competent to stand trial.

Dr. Fuller acknowledged that only a small percentage of people with a mental illness who are alleged to have committed a crime meet the criteria for an insanity defense. It was difficult for Dr. Fuller to reconstruct Holliman's thought patterns at the time of the fire. Dr. Fuller believed that at the time of the fire, Holliman was delusional and psychotic, and his mental state worsened because he self-medicated. Dr. Fuller did not believe that the three substances Holliman used were the primary cause of his delusions. Dr. Fuller could not opine whether Holliman knew the wrongfulness of his act. It was possible that, at the time of the fire, Holliman did not know that what he did was wrong.

On cross-examination, Dr. Fuller testified that Holliman was diagnosed with bipolar disorder for the first time after he was arrested. Though he had seen multiple mental health providers between 2013 and 2015, none of them had diagnosed him

with bipolar disorder, instead diagnosing him with depression and Attention Deficit Hyperactivity Disorder ("ADHD"). Dr. Fuller also did not ask Holliman how much Adderall he was taking or how much marijuana he was using.

In rebuttal, the State called Dr. Tim Proctor, a forensic psychologist. Dr. Proctor reviewed Holliman's mental health records and evaluations and met with him in jail. He testified that he reviewed the entire timeline of Holliman's mental health history. Dr. Proctor summarized Holliman's records, stating that he sought treatment from a community clinic and a university clinic for ADHD and depression. In 2014, he was prescribed a low dose of Adderall, and he visited doctors repeatedly to increase his dosage. Clinic notes described Holliman as "alert, oriented, mood stable." By July 2014, he was prescribed 30 milligrams of extended release Adderall, which is above the recommended dosage. In 2015, Holliman visited clinics multiple times, and each time he stated that he only needed a refill of his prescription and had no mental health concerns. Dr. Proctor testified that Adderall is an amphetamine and can cause psychosis in high dosages. He also described that marijuana in high doses can lead to or contribute to psychosis. Holliman was using three or four times the recommended dose of human growth hormones, though Dr. Proctor could not state what impact this had on his mental health.

Dr. Proctor opined that, while Holliman experienced genuine delusions and paranoia, he was not bipolar. Holliman did not have a primary severe mental problem

before his substance abuse. Dr. Proctor noted that Holliman did not experience bipolar disorder symptoms earlier in his life, and his symptoms resolved in jail. He stated that this could be because he was receiving medicine in the jail, but also, once jailed, he was not taking large doses of Adderall and human growth hormone while using a large amount of marijuana. According to Dr. Proctor, it was unsurprising that jail medical staff diagnosed Holliman with bipolar disorder upon arrival, based on how he was acting. But Dr. Proctor pointed out that the jail staff did not know that Holliman was also abusing substances. When Holliman improved on medication in jail, it was reasonable for medical staff to continue treating him, but the improvement could also be explained by the fact that he was not using substances anymore.

Dr. Proctor concluded that the paranoia and psychosis were caused by substance abuse rather than bipolar disorder. Dr. Proctor explained that the jury would decide whether Holliman's mental state and knowledge of his conduct met the statutory definition of insanity under the law. Dr. Proctor's ultimate opinion was that Holliman knew what he was doing was wrong.

The jury found Holliman guilty of murder. The same jury assessed punishment at 40 years' imprisonment. Holliman appeals.

Insanity Defense

Holliman challenges the factual sufficiency of the evidence to support the jury's rejection of his insanity defense. He does not challenge the sufficiency of the evidence to support the jury's finding of the essential elements of murder.

A. Applicable Law and Standard of Review

Texas presumes that a defendant is sane and that he intends the natural consequences of his actions. *Ruffin v. State*, 270 S.W.3d 586, 591 (Tex. Crim. App. 2008). Insanity is an affirmative defense that the defendant has the burden to prove by a preponderance of the evidence. TEX. PENAL CODE §§ 2.04(d), 8.01(a); TEX. CODE CRIM. PROC. art. 46C.153(a)(2). Insanity excuses a person from criminal responsibility even though the State proves all elements of the offense, including mens rea, beyond a reasonable doubt. TEX. CODE CRIM. PROC. art. 46C.153(a).

Insanity under the law is defined as (1) "a severe mental disease or defect" that (2) resulted in the actor not knowing that his conduct was wrong at the time of the offense. TEX. PENAL CODE § 8.01(a); *Bigby v. State*, 892 S.W.2d 864, 878 (Tex. Crim. App. 1994). In other words, a defendant's belief that his actions were morally justified does not equate to insanity under the law. *See Ruffin*, 270 S.W.3d at 592. The affirmative defense of insanity is a legal issue, not a medical one. *See Plough v. State*, 725 S.W.2d 494, 500 (Tex. App.—Corpus Christi 1987, no pet.). Although jurors may not arbitrarily disregard expert testimony as to insanity, neither may they

give conclusive effect to such testimony. *McAfee v. State*, 467 S.W.3d 622, 636–37 (Tex. App.—Houston [1st Dist.] 2015, pet. ref'd) (citing *Graham v. State*, 566 S.W.2d 941, 950–51 (Tex. Crim. App. 1978)). The circumstances of the crime itself are also important in determining the mental state of the accused at the time of the commission of the offense, and evidence indicating knowledge of wrongful conduct, such as an attempt to conceal incriminating evidence or elude law enforcement, may be considered. *McAfee*, 467 S.W.3d at 637; *see also Torres v. State*, 976 S.W.2d 345, 347–48 (Tex. App.—Corpus Christi 1998, no pet.) (holding that, in reaching its decision on insanity, jury may consider circumstantial evidence, including defendant's demeanor before and after committing crime, defendant's attempts to evade police or conceal incriminating evidence, defendant's expressions of regret or fear of consequences of his actions, and any other possible explanations for defendant's behavior). The factfinder's question is whether "the defendant factually know[s] that society considers [his] conduct against the law, even though [he], due to his mental disease or defect, may think that the conduct is morally justified." *Ruffin*, 270 S.W.3d at 592.

Holliman challenges only the factual sufficiency of the evidence to support the jury's rejection of his affirmative defense. By challenging the factual sufficiency of the evidence to support the adverse finding, Holliman is asserting that the adverse finding on his affirmative defense was so against the great weight and preponderance

of the entire body of admitted evidence as to be manifestly unjust. *See Matlock v. State*, 392 S.W.3d 662, 670 n.29, 671 (Tex. Crim. App. 2015). In review of the factual sufficiency to support the jury's rejection of an affirmative defense, we consider all of the evidence in a neutral light while preserving the factfinder's weight and credibility determinations. *Id.* at 671. We may find the evidence factually insufficient only "if, after setting out the relevant evidence and explaining precisely how the contrary evidence greatly outweighs the evidence supporting the verdict, [we] clearly state[] why the verdict is so much against the great weight of the evidence as to be manifestly unjust, conscience-shocking, or clearly biased." *Id.* at 671. If we so conclude, the remedy is a new trial, not acquittal. *See id.* at 672.

B. Analysis

Viewing the evidence in a neutral light while preserving the jury's credibility determinations, we hold that the jury's rejection of the insanity defense was neither against the great weight of the evidence nor manifestly unjust. *See Matlock*, 392 S.W.3d at 671. The jury could have reasonably concluded that Holliman knew of the wrongfulness of his actions. Other than his own testimony that he did not know right from wrong, none of his testimony supported his claim that he did not know the wrongfulness of his conduct at the time he committed it.

The jury heard evidence of Holliman's actions and demeanor before, during, and after the incident. *See McAfee*, 467 S.W.3d at 637–38 (considering defendant's

demeanor before, during and after the crime to support jury's rejection of insanity defense). For example, Holliman testified about purchasing gasoline in advance and what Taylor and his son were doing in the moments before he ran upstairs. After he lit Taylor and his son on fire, Holliman fled the burning house and hid on the University of Houston campus. Though he drove himself to the campus, he asked Peavey to pick him up and drive him to the airport. He asked someone else to buy him a plane ticket to leave the state and waited for the flight in a hotel room booked by Peavey. Had Peavey not called law enforcement to reveal Holliman's location when she heard about the fire on the news, it is unclear if Holliman would have been found before he left the state.

Peavey also testified that Holliman was evasive. When she asked him what had happened, both when he first called her and later when she asked again after learning of the fire, he did not confide in her. The jury also heard that Holliman told a doctor that he fled to the university campus because he knew police would be looking for him. While Holliman disputed the doctor's account, the jury was free to judge the credibility of the witnesses. *McAfee*, 467 S.W.3d at 637. The jury could have reasonably concluded that Holliman was attempting to abandon his vehicle and minimize the chances that law enforcement would find him. *See Torres*, 976 S.W.2d at 347–48 (jury may consider defendant's attempts to evade police and conceal incriminating evidence).

The expert testimony also supported the jury's rejection of the affirmative defense. While both experts agreed that Holliman was psychotic at the time of the offense, neither expert opined that Holliman did not know the wrongfulness of his actions. *Id.* (rejecting appellant's attempt to reevaluate expert evidence regarding insanity and noting circumstantial evidence supporting jury's rejection of the defense). Holliman's expert witness, Dr. Fuller, testified that he did "not feel confident that . . . [he could] assert whether or not [Holliman] did not know the wrongfulness of his actions." The State's rebuttal expert, Dr. Proctor, concluded that substance abuse caused Holliman's psychosis and his ultimate opinion was that Holliman knew what he was doing was wrong.

After hearing all the evidence, the jury could have determined that Holliman's testimony was not credible and concluded that his actions indicated that he knew his conduct was wrong at the time of the murder. The evidence was sufficient to support the jury's rejection of Holliman's affirmative defense and the jury's decision was neither against the great weight of the evidence nor manifestly unjust. *See Matlock,* 392 S.W.3d at 671. We overrule Holliman's first issue.

Exclusion of Evidence

In his second issue, Holliman contends that the trial court abused its discretion in excluding evidence, and the State responds that the evidence was unauthenticated, inadmissible hearsay. Holliman sought to admit a YouTube video he purported to

have made a week before the murder, arguing it was relevant to his mental state at the time. The court did not admit the video and held that it was irrelevant to the issues at trial. We hold that, even assuming it was error to exclude the evidence, Holliman was not substantially harmed.

A. Standard of Review

We review a trial court's decision to admit or exclude evidence under an abuse of discretion standard. *De La Paz v. State*, 279 S.W.3d 336, 343–44 (Tex. Crim. App. 2009). If the trial court's ruling falls within the zone of reasonable disagreement, we will affirm that decision. *Moses v. State*, 105 S.W.3d 622, 627 (Tex. Crim. App. 2003).

Relevant evidence means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence. TEX. R. EVID. 401. Evidence which is not relevant is inadmissible. TEX. R. EVID. 402. It is important, when determining whether evidence is relevant, that courts examine the purpose for which the evidence is being introduced. *Layton v. State*, 280 S.W.3d 235, 240 (Tex. Crim. App. 2009). "It is critical that there is a direct or logical connection between the actual evidence and the proposition sought to be proved." *Id.*

Generally, the erroneous exclusion of evidence is non-constitutional error. *Walters v. State*, 247 S.W.3d 204, 221 (Tex. Crim. App. 2007). Erroneous exclusion

of evidence can rise to the level of constitutional error, however, when the excluded evidence "forms such a vital portion of the case that exclusion effectively precludes the defendant from presenting a defense." *Potier v. State*, 68 S.W.3d 657, 665 (Tex. Crim. App. 2002). While excluding testimony that would "incrementally" further the defendant's defensive theory is not constitutional error, it is constitutional error to exclude evidence that "goes to the heart of the defense." *Ray v. State*, 178 S.W.3d 833, 836 (Tex. Crim. App. 2005) (holding erroneously excluding testimony that "incrementally" furthers defense is non-constitutional error); *Wiley v. State*, 74 S.W.3d 399, 405 (Tex. Crim. App. 2002) (holding erroneously excluding testimony that "goes to the heart of the defense" is constitutional error).

A non-constitutional error that does not affect substantial rights should be disregarded on appeal. TEX. R. APP. P. 44.2(b). A substantial right is affected when the error had a substantial and injurious effect or influence in determining the jury's verdict. *Taylor v. State*, 268 S.W.3d 571, 592 (Tex. Crim. App. 2008). In performing a harm analysis, we examine the entire trial record and calculate, as much as possible, the probable impact of the error upon the rest of the evidence. *See Coble v. State*, 330 S.W.3d 253, 281 (Tex. Crim. App. 2010).

B. Analysis

Preliminarily, any error in excluding the video was non-constitutional error, as the video did not go "to the heart" of Holliman's defense. *Ray*, 178 S.W.3d at

836. At best, the evidence would have incrementally furthered Holliman's insanity defense. The jury heard ample evidence of his mental state leading up to and on the day of the fire, and the video, purported to be filmed eight days before the fire, would not have assisted the jury in determining his mental state at the moment he lit Taylor and his son on fire.

Even assuming the court erroneously excluded the video, the error was harmless. *Potier*, 68 S.W.3d at 666. The jury heard ample evidence of Holliman's mental state. The jury heard testimony from Holliman, both mental health experts, Holliman's family members, and Taylor that Holliman experienced paranoia, delusions, and possible psychosis. Given the other testimony, the video would not have assisted the jury in further determining if Holliman suffered from a severe mental defect. Jurors could have concluded from the video, if they believed that it showed mental illness and also believed that he wrote the lyrics, that he felt attacked. But Holliman testified to the same, and both experts agreed that he was paranoid, delusional, and psychotic.

The video, which was recorded eight days before the fire, would not have assisted the jury in determining whether Holliman knew the wrongfulness of his conduct at the time of the fire. It also did not advance his theory that bipolar disorder caused him to be delusional and act irrationally, nor did it support or refute the State's theory that Holliman's psychosis resulted from voluntary intoxication. When

viewed in light of the entire record, exclusion of the video did not harm Holliman. *Potier*, 68 S.W.3d at 666. We overrule his second issue.

Conclusion

We affirm the judgment of the trial court.

Peter Kelly
Justice

Panel consists of Justices Keyes, Kelly, and Landau.

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