Affirmed and Memorandum Opinion filed August 31, 2010.

In The

Fourteenth Court of Appeals

NO. 14-09-00068-CR
NO. 14-09-00069-CR

LESLIE MEGAN LEWIS-GRANT, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the 52nd District Court
Coryell County, Texas
Trial Court Cause Nos. FO-07-19102 & FCM-07-19103

MEMORANDUM OPINION

Leslie Megan Lewis-Grant was convicted of the felony offense of murder and sentenced to confinement for life in the Institutional Division of the Texas Department of Criminal Justice. During the same trial, Lewis-Grant was also convicted of the felony offense of tampering with or fabricating physical evidence and sentenced to ten years' confinement in the Institutional Division of the Texas Department of Criminal Justice. She appeals the murder conviction on these grounds: (1) the evidence supporting the murder conviction is legally and factually insufficient; (2) the evidence was insufficient to connect her to the offense and corroborate the accomplice-witness testimony; (3) the

trial court erred in submitting a law-of-parties instruction to the jury; and (4) the trial court erred in failing to submit an accomplice-witness instruction to the jury. Lewis-Grant also appeals her conviction of the offense of tampering with or fabricating physical evidence because: (1) the evidence was insufficient to connect her to the offense and corroborate the accomplice-witness testimony; and (2) the trial court erred in failing to submit an accomplice-witness instruction to the jury. We affirm.

I

At about five o'clock in the morning on September 15, 2007, Coryell County deputy sheriff David White responded to a call about a stationary pick-up truck in the middle of Greenbriar Road. Once he arrived at the scene, Deputy White testified he discovered an empty vehicle with its engine running as well as a body dumped in the ditch beside the road. Coryell County lieutenant Ricky Helms also responded to the call. He observed the body was wrapped in some bedding, and the body appeared to have multiple stab wounds to the chest. Lieutenant Helms testified he recognized the deceased as James Michael Grant (the "complainant").

Coryell County investigators and Texas Ranger Jesse Ramos went to the complainant's residence. Ranger Ramos stated the complainant's bedroom was ransacked, and there was a "bloody mess" on the mattress, walls, floors, and underneath the clothing in the room. Additionally, there was testimony that some property was missing from the home. In Ranger Ramos's opinion, the complainant was stabbed to death while in bed and transferred to his pick-up truck, and then the assailant ransacked the room to make it seem as if the home had been burglarized.

At trial, the State's theory of the case was that the complainant's ex-wife, appellant Leslie Megan Lewis-Grant, had solicited her boyfriend to kill the complainant. Lewis-Grant and the complainant were married in 1990 and had two children, Jamie and Kate Grant. But in 2004 the couple divorced. During trial, many of the State's witnesses testified the divorce was "messy," and Lewis-Grant hated the complainant because he

had obtained custody of the children. Multiple witnesses, including Lewis-Grant's supervisor Diane Tadlock, Lewis-Grant's father Teddy Lewis, Lewis-Grant's coworker Julie White, and local-business owner Deborah Buster, stated they heard Lewis-Grant say she wished the complainant would die or she would be better off if the complainant were dead. Tadlock emphasized Lewis-Grant said every other day, if not daily, she wished the complainant would die. Tadlock testified, "[Lewis-Grant] said it in a joking manner, but we knew she was really wishing it."

Garnett Grant, the complainant's father, testified that the complainant began taping his conversations with Lewis-Grant because she previously told the complainant she had tried to kill him by switching the insulin he took for his diabetes. The complainant's girlfriend Cherryl Tull, Coryell County detective Armando Paniagua, Garnett Grant, White, and Tadlock also testified they heard Lewis-Grant had purposefully switched the complainant's insulin in order to harm him. White and Tadlock both stated as a licensed vocational nurse Lewis-Grant had access to insulin, and White testified Lewis-Grant knew how to administer insulin and could readily distinguish between different types of insulin. Tull recalled a conversation with the complainant in which he told her Lewis-Grant had told him she took insulin from her work and filled his syringes with different insulin. White explained if someone were to switch a person's insulin from a slow-acting insulin to a fast-acting insulin, which is what Lewis-Grant was trying to do, a person's blood sugar would drop, and that person would go into a diabetic coma. Additionally, Tadlock and White stated Lewis-Grant discussed baking the complainant a cake "with a lot of extra sugar," so "his sugar would go really high."

Both White and Tadlock also testified Lewis-Grant told them about a dream she had in which her son killed the complainant by stabbing him with a knife or machete. After discussing her dream, Lewis-Grant then "kind of jokingly" stated, "I think I am going to buy [Jamie] a knife" and "I'm going to buy [Jamie] a machete for Christmas." Ed Palmer, the complainant's best friend, testified about an altercation between Lewis-

Grant and the complainant. During the argument, Lewis-Grant went to her vehicle, retrieved a loaded gun, and said she was going to "kill that son-of-a-bitch." Palmer stopped Lewis-Grant and removed the gun and bullets from her possession.

When Lewis-Grant was separated from the complainant, Leewood Broussard moved in with her. At the time, Broussard's daughter was dating a man named Jeremy Knutson. At trial, Knutson testified he had contact with Lewis-Grant five or six times. Knutson stated she offered him $5,000 to kill the complainant, and she made the offer more than once.

In July 2007, Lewis-Grant met John Hopkins, who was a twenty-year-old ex-convict who frequently hung out with Jamie. Shortly after meeting, Hopkins and Lewis-Grant began an intimate relationship. Hopkins testified Lewis-Grant would talk to him about wanting someone to kill the complainant. He stated Lewis-Grant told him he could have anything he wanted if he killed the complainant, and he could also take anything from the complainant's house after killing him. Hopkins stated Lewis-Grant also promised him the income from the complainant's social-security benefits once the complainant was dead. Additionally, Hopkins expressed he thought Lewis-Grant was being sincere when she discussed killing the complainant. Multiple times Hopkins testified there was an understanding between Lewis-Grant and himself that he would kill the complainant.

The day before the complainant died, Tadlock testified Lewis-Grant was very upset at work. The complainant was apparently trying to prevent Lewis-Grant's mother from visiting their daughter, Kate, at school. Tadlock stated Lewis-Grant left work early to remedy the situation. Hopkins also testified Lewis-Grant was arguing with the complainant the day before he was killed. Hopkins stated he was already drinking that day, and he decided to kill the complainant because "[the complainant] made [Lewis-Grant] cry" and he "basically had enough of it."

Hopkins continued to drink and self-medicate throughout the day. He stated he called Jamie and asked to let him know when the complainant went to sleep. Hopkins testified Lewis-Grant did not know he planned on killing the complainant that day, but there was an understanding between the two of them that he would kill the complainant at some point. Additionally, Hopkins stated Jamie knew why Hopkins wanted to come into the house. Several State witnesses testified Jamie was loyal to his mother, and Lewis-Grant talked about her hatred for the complainant when both children were present.

After calling Jamie, Hopkins went to a Wal-Mart and stole a knife and a machete. He also bought and consumed more alcohol while he waited for Jamie to call. The State's trial exhibits included telephone records that indicated Jamie called Hopkins six times between 12:39 a.m. and 2:25 a.m. Hopkins testified Jamie let him into the complainant's house through the backdoor. He stated he told Jamie to keep Kate in her bedroom and to go to his room. Hopkins then went into the complainant's bedroom, put his hand on the complainant, and stabbed the complainant numerous times. He testified Jamie watched him kill the complainant, and then Jamie went over to the complainant's body and stomped on it. Medical examiner Dr. Janice Townsend-Parchman testified all the stab wounds contributed to the complainant's death, but just the stab wounds to the complainant's neck, lungs, and around his heart individually could have caused him to die quickly.

Hopkins and Jamie then ransacked the room to make it appear like a burglary. Hopkins stated he took a 9-mm handgun, two extra clips for the gun, and $380 from the complainant's wallet. He testified he and Jamie wrapped the complainant's body in the sheets and bedding from the bed, threw the complainant into the bed of his truck, and then Jamie drove the complainant's car to Greenbriar Road while he followed in Lewis-Grant's car. Hopkins stated they dumped the body in the ditch, and then proceeded to Lewis-Grant's home.

Hopkins and Jamie went to Lewis-Grant's house. Hopkins testified he was "covered in blood" and "Jamie was tracking in blood from the bottom of his boots from when he stomped on his own father's body." According to Hopkins, Lewis-Grant was in shock and began screaming. Hopkins stated Lewis-Grant was probably in shock because she did not know he was going to kill the complainant that particular night. But he again emphasized there was an understanding between Lewis-Grant and himself that he would kill the complainant at some point. Hopkins removed his clothes and instructed Lewis-Grant to take his and Jamie's clothes and burn them in the barbeque pit. Hopkins testified he did not see Lewis-Grant actually put the clothes in the pit, but witnessed Lewis-Grant "messing" with the pit. Later that morning, Hopkins saw police officers driving by on Greenbriar Road. He testified he told Jamie and Lewis-Grant to put the fire out, and then he asked Lewis-Grant to take the burned clothes and put them in a trash bag. Hopkins then took the trash bag and Jamie's boots and disposed of the items. If questioned about the incident, Hopkins stated he told Lewis-Grant to say she and Hopkins were at Lewis-Grant's home all night.

When Coryell County investigators and Ranger Ramos went to the complainant's residence the morning he died, they found Jamie and Kate alone in the home. Although Jamie told investigators he and his sister had been asleep, telephone records indicated there were at least five phone calls between Jamie and Lewis-Grant before 10:00 a.m.—the time Lewis-Grant told Lieutenant Helms she learned about the murder. Later, Lewis-Grant testified at trial she discovered the complainant died when Jamie called her "around 8:30 a.m. the next morning," and she "threw some clothes on" and went over to the complainant's home. Detective Paniagua stated Lewis-Grant was shaky when she arrived at the complainant's home. She informed the officers she lived on Greenbriar Road, which was near the location of the complainant's body. This prompted Lieutenant Helms to photograph Lewis-Grant's car and hands. Detective Paniagua testified he believed Lewis-Grant was a suspect in the complainant's murder.

During the investigation, Deputy White informed Ranger Ramos he had seen smoke coming from a chiminea at a home near the site where the complainant's body was dumped. Ranger Ramos later discovered the residence belonged to Lewis-Grant, and officers received her permission to search her home. Ranger Ramos testified the chiminea did not appear to have been lit that day, but the barbeque pit contained "several charred remains of black, fine charcoal particles, some of it even appeared to be denim material to blue jeans and the brads on jeans . . . [and] the backside of a button fly to jeans." The materials in the barbeque pit were "doused in water as if something had been extinguished recently." At trial, Lewis-Grant denied assisting Jamie and Hopkins in burning their clothes. Tadlock testified Lewis-Grant said she was burning sick-call requests the morning the complainant's body was found, and that was the reason there was smoke coming from her chiminea. White stated Lewis-Grant's statement was odd because Lewis-Grant had recently been reprimanded for destroying sick-call requests.

Lieutenant Helms testified Lewis-Grant did not seem upset when he interviewed her after the murder. Ranger Ramos also stated Lewis-Grant did not cry or appear upset after the complainant had been killed, but instead she was "acting normal." Teddy Grant and Glennette Lewis, Lewis-Grant's stepmother, testified Lewis-Grant was not crying or sad, and she proclaimed to them, "I have custody [of the children] now." Hopkins stated Lewis-Grant constantly thanked him for killing the complainant, and she told him "it was one of the best things anybody could have done for her."

Hopkins did not confess to the complainant's murder until late October. The sheriff's department received a call on October 28 from Jamie that Hopkins was threatening to commit suicide. At trial, the State admitted the 9-1-1 call in which Jamie stated Hopkins had a gun and had written a suicide note. Officers responded to Lewis-Grant's home, but they located Hopkins at a nearby residence holding the resident at gunpoint. Officers arrested Hopkins, and while confessing to the complainant's murder, he implicated both Jamie and Lewis-Grant. Lieutenant Helms stated Hopkins said

Lewis-Grant had asked him on several occasions to kill the complainant, and she offered him the income from the complainant's social-security benefits in return. At trial, Hopkins testified he pleaded guilty to capital murder for killing the complainant, and he was sentenced to confinement for life without the possibility of parole. Ranger Ramos testified Jamie's confession corroborated the majority of Hopkins' statements and confession, including that Lewis-Grant assisted in burning Jamie's and Hopkins' clothes after the murder. Officers then arrested and indicted both Jamie and Lewis-Grant for the murder of the complainant. At trial, the State presented evidence that Jamie had also pleaded guilty to the complainant's murder.

Lewis-Grant testified the complainant was abusive toward her, and she was afraid of him. She also stated she never asked anyone, including Knutson or Hopkins, to kill the complainant. Lewis-Grant also denied helping Hopkins and Jamie burn their clothes. After hearing all the evidence, the jury convicted Lewis-Grant of the lesser-included offense of murder and the felony offense of tampering with or fabricating evidence. Lewis-Grant was sentenced to confinement for life for the murder of the complainant, and she was sentenced to ten years' confinement for tampering with or fabricating physical evidence. This appeal followed.

II

For her convictions of murder and tampering with or fabricating physical evidence, Lewis-Grant complains about the lack of an accomplice-witness instruction and insufficient evidence to corroborate accomplice-witness testimony. Because these complaints are interrelated, we will address them together.[1]

[1] This section addresses both of Lewis-Grant's issues relating to her tampering with or fabricating physical evidence conviction, cause number 14-09-00068-CR, as well as issues three and five relating to her murder conviction, cause number 14-09-00069-CR.

A

First, Lewis-Grant contends the trial court erred in failing to submit an accomplice-witness instruction for Jamie Grant. She claims Jamie acted as Hopkins' accomplice in killing the complainant and by destroying evidence of the crime. Because the State introduced several of Jamie's statements during the trial, Lewis-Grant argues the court should have included an accomplice-witness instruction for Jamie in the jury charge. She argues the jury used Jamie's statements to corroborate Hopkins' testimony, and the lack of an instruction forbidding the use of such corroboration egregiously harmed her. The State contends an accomplice-witness instruction is only required when the accomplice actually testifies under oath or affirmation in the presence of a tribunal. Because Jamie never testified at trial, the State argues he was not an accomplice witness and his out-of-court statements did not necessitate an accomplice-witness instruction. The trial court, therefore, did not err in failing to include the instruction in the jury charge.

In Texas, a conviction cannot be based on the testimony of an accomplice unless corroborated by other evidence tending to connect the defendant with the offense committed. Tex. Code Crim. Proc. Ann. art. 38.14 (Vernon 2006); *Cocke v. State*, 201 S.W.3d 744, 747 (Tex. Crim. App. 2006). An accomplice is one who participated with another before, during, or after the commission of a crime. *Herron v. State*, 86 S.W.3d 621, 631 (Tex. Crim. App. 2002); *Nguyen v. State*, 177 S.W.3d 659, 668 (Tex. App.—Houston [1st Dist.] 2005, pet. ref'd); *Maynard v. State*, 166 S.W.3d 403, 410 (Tex. App.—Austin 2005, pet. ref'd). Participation requires an affirmative act that promotes the commission of the offense with which the defendant is charged. *Cocke*, 201 S.W.3d at 748. In other words, "a person is an accomplice if there is sufficient evidence connecting [him] to the criminal offense as a blameworthy participant." *Blake v. State*, 971 S.W.2d 451, 454–55 (Tex. Crim. App. 1998). A prosecution witness who is indicted for a lesser-included offense based on his alleged participation in the commission of the

defendant's charged crime is also an accomplice as a matter of law. *Herron*, 86 S.W.3d at 631; *Nguyen*, 177 S.W.3d at 668. If the prosecution witness is an accomplice as a matter of law, the court must instruct the jury accordingly. *Herron*, 86 S.W.3d at 631.

Accomplice-witness testimony should be considered with caution because accomplices often have incentive to lie to procure reduced sentences or clemency. *See Blake*, 971 S.W.2d at 454. Accomplices have a reason to fabricate stories; accomplices may want to shift blame and consequences to another person or may have been promised, or hope to receive, clemency or a reduced sentence in exchange for testifying. *Bingham v. State*, 913 S.W.2d 208, 211 (Tex. Crim. App. 1995). To protect the defendant from the accomplice's incentive to lie, the accomplice-witness rule mandates that juries must be told if a witness is also an accomplice and that juries may only consider accomplice-witness testimony if it is corroborated by non-accomplice evidence. *Blake*, 971 S.W.2d at 454–55.

But article 38.14 does not apply to an accomplice's out-of-court statements. *Bingham*, 913 S.W.2d at 210; *White v. State*, 982 S.W.2d 642, 649 (Tex. App.—Texarkana 1998, pet. ref'd); *see also Hammond v. State*, 942 S.W.2d 703, 707 (Tex. App.—Houston [14th Dist.] 1997, no pet.) (because accomplice did not testify at trial, his statements needed no corroboration even though other witnesses testified about his out-of-court statements); *Maynard*, 166 S.W.3d 403, 413 (stating because the accomplice's out-of-court statements were not testimony, they did not invoke the accomplice-witness rule). The Texas Court of Criminal Appeals narrowly defined the word "testimony" in article 38.14 as evidence given by a witness under oath or affirmation in the presence of a live tribunal. *Bingham*, 913 S.W.2d at 210, 213. Thus, an out-of-court statement would not fall under the definition of "testimony," and article 38.14 would not apply. *See id.* at 210; *Nguyen*, 177 S.W.3d at 669.

Jamie's statements about the complainant's death and the destruction of evidence were introduced through Ranger Ramos's testimony. Because the accomplice-witness

rule—article 38.14—applies only to testimony adduced in open court by live witnesses, there is no basis for an accomplice-witness instruction for Jamie. *See Nguyen*, 177 S.W.3d at 669 (citing *Bingham*, 913 S.W.2d at 210). We hold the trial court did not err in failing to include an accomplice-witness instruction about Jamie in the jury charge. Accordingly, we overrule Lewis-Grant's complaints.

B

Lewis-Grant contends the evidence to convict her of murder and tampering with or fabricating evidence is insufficient and does not corroborate Hopkins' testimony. Specifically, she claims the evidence only demonstrated she disliked her husband and wished he was dead. The State argues the non-accomplice-witness testimony needs only to "tend to connect" Lewis-Grant with the commission of the offenses. Because there is ample evidence to "tend to connect" Lewis-Grant with the commission of both crimes, the State contends Hopkins' testimony was sufficiently corroborated.

As previously stated, a conviction based on the testimony of an accomplice must be sufficiently corroborated by other non-accomplice evidence. Tex. Code Crim. Proc. Ann. art 38.14; *Simmons v. State*, 282 S.W.3d 504, 505 (Tex. Crim. App. 2009); *Batts v. State*, 302 S.W.3d 419, 432 (Tex. App.—Houston [14th Dist.] 2009, no pet.). The accomplice-witness rule is of statutory origin and differs from legal- and factual-sufficiency standards because it is not derived from federal or state constitutional principles. *Druery v. State*, 225 S.W.3d 491, 498 (Tex. Crim. App. 2007). In our review, we eliminate all accomplice-witness testimony from consideration and then determine whether the remaining non-accomplice-witness testimony and evidence tends to connect the accused with the commission of the crime. *Malone v. State*, 253 S.W.3d 253, 257 (Tex. Crim. App. 2008); *Yost v. State*, 222 S.W.3d 865, 872 (Tex. App.—Houston [14th Dist.] 2007, pet. ref'd). The Texas Court of Criminal Appeals has recently concluded when there are two views of the evidence—one tending to connect the accused to the

offense and the other not—then appellate courts should defer to the fact-finder's view of the evidence. *Simmons*, 282 S.W.3d at 508.

The corroborating evidence does not need to be sufficient in itself to establish guilt, nor must it directly connect the accused to the commission of the offense. *Batts*, 302 S.W.3d at 432; *Yost*, 222 S.W.3d at 872; *see also Simmons*, 282 S.W.3d at 508 (quoting *Andrews v. State*, 370 So.2d 320, 322 n.5 (Ala. Crim. App. 1979) ("'Corroborate means to strengthen, to make stronger; to strengthen, not the proof of any particular fact to which the witness has testified, but to strengthen the probative, [in]criminating force of his testimony.'") (citations omitted)). The evidence must merely link the accused in some way to the commission of the crime, and show rational jurors could conclude the evidence sufficiently tended to connect the accused with the offense. *Batts*, 302 S.W.3d at 432–33. Each case must be decided on its own facts and circumstances. *Id.* at 433 (citing *Dowthitt v. State*, 931 S.W.2d 244, 249 (Tex. Crim. App. 1996)).

Reviewed individually, suspicious circumstances like an accused's motive, presence at the scene, or opportunity to commit the crime are not by themselves sufficient to corroborate an accomplice-witness's testimony. *Yost*, 222 S.W.3d at 872 (citing *Gill v. State*, 873 S.W.2d 45, 49 (Tex. Crim. App. 1994)). But suspicious circumstances that are individually insufficient may be combined with other circumstances to constitute sufficient corroborative evidence to sustain a conviction. *Id.*; *see, e.g., Mitchell v. State*, 650 S.W.2d 801, 808 (Tex. Crim. App. 1983) (stating the accused's presence with the accomplice, in conjunction with other circumstances, may be sufficient to corroborate accomplice-witness testimony); *Paulus v. State*, 633 S.W.2d 827, 846 (Tex. Crim. App. [Panel Op.] 1981) (concluding evidence demonstrating the accused's motive or opportunity can be considered in connection with evidence that tends to connect the accused with the crime). Additionally, ill will toward the deceased may be a factor that corroborates the accomplice-witness testimony. *See, e.g.*, *Rodriquez v. State*, 508 S.W.2d 80, 83 (Tex. Crim. App. 1974). Corroborating evidence may also be comprised of

circumstantial evidence. *Gosch v. State*, 829 S.W.2d 775, 777 (Tex. Crim. App. 1991). Even apparently insignificant incriminating circumstances may be satisfactory corroborating evidence. *Trevino v. State*, 991 S.W.2d 849, 852 (Tex. Crim. App. 1999).

1

We first review the accomplice-witness testimony and non-corroborating evidence with regard to Lewis-Grant's tampering with or fabricating physical evidence conviction. Hopkins testified at trial Lewis-Grant asked him to kill the complainant in exchange for income from the complainant's social-security benefits and any items he wanted from the complainant's home. Although he testified Lewis-Grant did not know he was going to kill the complainant that particular night, he stated numerous times there was an understanding between himself and Lewis-Grant that he would kill the complainant at some point. After Hopkins killed the complainant, he testified he and Jamie went to Lewis-Grant's house. Hopkins testified he was "covered in blood from the amount of stab wounds," and "Jamie was tracking in blood from the bottom of his boots from when he stomped on his own father's body." According to Hopkins, he removed his clothes and instructed Lewis-Grant to take his and Jamie's clothes and burn them in the barbeque pit. Hopkins testified he did not see Lewis-Grant actually put the clothes in the pit, but Jamie told him she burned the clothes. Additionally, Hopkins stated he witnessed Lewis-Grant "messing" with the barbeque pit. He then testified he told Jamie and Lewis-Grant to put the fire out, and then he asked Lewis-Grant to take the burned clothes and put them in a trash bag.

In reviewing the non-accomplice witness testimony, multiple State witnesses, including Tadlock, White, Buster, Garnett Grant, and Teddy Lewis testified Lewis-Grant wanted the complainant to die. There was testimony she was upset the complainant received custody of their children. Lewis-Grant even testified she hated the complainant. Tadlock, Lewis, Tull, Detective Panigua, and Garnett Grant all stated they heard Lewis-Grant had previously tried to seriously harm the complainant by switching his insulin.

Palmer testified Lewis-Grant got into an altercation with the complainant during which she retrieved a loaded gun said she was going to kill the complainant. Furthermore, Knutson testified Lewis-Grant offered him, on more than one occasion, $5,000 to kill the complainant. It is apparent from the testimony at trial that Lewis-Grant had a motive to assist in killing the complainant, and she harbored ill will toward him. *See Rodriquez*, 508 S.W.2d at 83 (stating a defendant's ill will toward the deceased may be a factor that corroborates accomplice-witness testimony); *Yost*, 222 S.W.3d at 872 (discussing that a defendant's motive can be combined with other evidence to "tend to connect" a defendant to the crime).

Lewis-Grant also made several contradictory statements both in and out of court. Lieutenant Helms testified Lewis-Grant originally told him she and Hopkins were at her home asleep the night the complainant was killed. At trial, Lewis-Grant testified she went to bed around 10:30 p.m., but woke up around 2:30 a.m. and noticed Hopkins was gone. Belinda Bankhead-Toker, Lewis-Grant's friend, testified Lewis-Grant told her the night the complainant was killed, she "had gotten really drunk" and passed out by 9:00 p.m. Tadlock testified Lewis-Grant told her Jamie had called her house in the middle of the night and asked to speak to Hopkins. There was also testimony from State witnesses that Lewis-Grant said the complainant's death was probably a result of drugs, and the police had discovered drugs in the complainant's storage shed. Lewis-Grant changed her story about what she was doing the night of the complainant's death, and she fabricated a theory of how he died. Suspicious circumstances that are individually insufficient may be combined with other circumstances to constitute sufficient corroborative evidence to sustain a conviction. *See Yost*, 222 S.W.3d at 872.

Furthermore, even apparently insignificant incriminating circumstances may be satisfactory corroborating evidence. *See Trevino,* 991 S.W.2d at 852. Deputy White testified he saw smoke coming from a chiminea at a home near the location where he found the complainant's body. He also stated there were many lights on around the

home. In the barbeque pit at Lewis-Grant's home, Ranger Ramos discovered remains of a pair of blue jeans. The materials in the barbeque pit were "doused in water as if something had been extinguished recently." Coryell County evidence technician John Blanchard also testified there were two bottles of lighter fluid next to the barbeque pit. Ranger Ramos stated Jamie's confession corroborated Hopkins' statements and confession, including that Lewis-Grant assisted in burning the clothes they were wearing that night. Although Lewis-Grant denied assisting Hopkins and Jamie in burning their clothes, she did tell Tadlock the reason smoke was coming from her house was because she was awake that morning burning sick-call requests. Lewis-Grant was at her home that morning, and she had the opportunity to participate in destroying evidence of the complainant's murder. *See Paulus*, 633 S.W.2d at 846.

Corroborating evidence does not need to be sufficient in itself to establish guilt, nor must it directly connect the accused to the commission of the offense. *Batts*, 302 S.W.3d at 432; *Yost*, 222 S.W.3d at 872. Thus, we conclude the evidence links Lewis-Grant in some way to the tampering with evidence and shows rational jurors could conclude the evidence sufficiently tended to connect the accused with the offense. *See Batts*, 302 S.W.3d at 432–33.

2

Next, we review the accomplice-witness testimony and non-corroborating evidence with regard to Lewis-Grant's murder conviction. In addition to Hopkins' testimony set out in the section above, he also testified he first thought about killing the complainant "about a month" after Lewis-Grant said she wanted him to kill the complainant. He stated Lewis-Grant wanted exclusive custody of her children, and she probably would get it only if the complainant was dead. Hopkins also described in detail how he killed the complainant. When asked if he took items from the complainant's home because Lewis-Grant told him he was entitled to those items, Hopkins answered, "Yes." Hopkins also stated he drove Lewis-Grant's car and used her credit card because

he felt it was part of the payment for killing the complainant. He again emphasized there was an understanding between himself and Lewis-Grant, based on their prior conversations, that he would kill the complainant.

Hopkins testified that after he killed the complainant, his relationship with Lewis-Grant was very good and she thanked him almost daily for doing it, but Hopkins also stated Lewis-Grant constantly worried they would get caught. Hopkins testified Lewis-Grant tried to divert attention from herself and Hopkins by telling people someone was after her, and that the same person had attempted to set fire to her home. In fact, Hopkins explained he set fire to Lewis-Grant's home "at her direction."

In reviewing the non-accomplice-witness evidence, we incorporate the same circumstances, testimony, and evidence described in the section above and detailed in the facts. As previously stated, Lewis-Grant harbored ill will toward the complainant. *See Rodriquez*, 508 S.W.2d at 83. Lewis-Grant had a motive and opportunity to commit the offense. *See Paulus*, 633 S.W.2d at 846 (discussing opportunity); *Yost*, 222 S.W.3d at 872 (discussing motive).

Moreover, she spoke with Jamie the night before the complainant was killed, and at least five times before 10:00 a.m. the morning of his death. Garnett Grant and Kathy Grant, the complainant's sister, stated Jamie hated the complainant, and Kathy Grant testified she thought Jamie was trained to hate the complainant. Bankhead-Toker stated after the complainant was killed, Lewis-Grant came over to her house and told her that Jamie killed the complainant. Ranger Ramos testified that Jamie's confession corroborated "the majority of" Hopkins' statements and confessions—thus, implicating Lewis-Grant in the complainant's murder.

Furthermore, Lieutenant Helms and Ranger Ramos both testified Lewis-Grant did not seem upset that the complainant was dead. Tadlock stated when she visited Lewis-Grant, Lewis-Grant was "tearful, then normal, then tearful" again, but her demeanor did

not seem real. Glennette Lewis testified that after the complainant died, Lewis-Grant announced, "I have custody [of the children] now." Additionally, Tadlock and White stated Lewis-Grant began receiving the income from the complainant's social-security benefits, and Tadlock testified Lewis-Grant bragged about having extra money.

Suspicious circumstances like Lewis-Grant's motive and opportunity to commit the crime combined with other circumstances constitute sufficient corroborative evidence to sustain the murder conviction. *See Yost*, 222 S.W.3d at 872. Thus, we conclude the evidence links Lewis-Grant in some way to the offense and shows rational jurors could conclude the evidence sufficiently tended to connect the accused with the offense. *See Batts*, 302 S.W.3d at 432–33. Accordingly, we overrule Lewis-Grant's corroboration and accomplice-witness issues.

III

In her fourth issue concerning her murder conviction, Lewis-Grant complains the trial court erred by including a law-of-parties instruction in the jury charge. She contends by submitting the law-of-parties instruction to the jury, the trial court expanded the theory of liability the State alleged in the indictment and caused her egregious harm. The State argues the indictment alleged capital murder, and the charge allowed for a conviction for the lesser-included offense of murder based on the facts of the case. Because the charge included an instruction on the law of parties, the State contends the "the jury could have found [Lewis-Grant] solicited, encouraged, directed, aided, or attempted to aid Hopkins by employing him to cause [the complainant's] death pursuant to their agreement and understanding he would do so." Furthermore, Lewis-Grant never objected to the jury charge; thus, the State argues Lewis-Grant must show the instruction egregiously harmed her.

A person commits the offense of capital murder if he commits the murder for remuneration or the promise of remuneration or employs another to commit the murder for remuneration or the promise of remuneration. Tex. Penal Code Ann. § 19.03(a)(3)

(Vernon 2003 & Supp. 2009). A person commits murder if he intentionally or knowingly causes the death of another person or intends to cause serious bodily injury and commits an act clearly dangerous to human life that causes the death of another. Tex. Penal Code Ann. § 19.02(b)(1), (2) (Vernon 2003). A person acts intentionally with respect to the nature of his conduct or to a result of his conduct when it is his conscious objective or desire to engage in the conduct or cause the result. *Id.* § 6.03(a) (Vernon 2003). A person acts knowingly with respect to the nature of his conduct or to circumstances surrounding his conduct when he is aware of the nature of his conduct or that the circumstances exist. *Id.* § 6.03(b). A person also acts knowingly if he is aware his conduct is reasonably certain to cause the result. *Id.*

Further, a person is "criminally responsible as a party to an offense" if the offense was committed "by his own conduct, by the conduct of another for which he is criminally responsible, or by both." *Id.* § 7.01(a) (Vernon 2003). A person is criminally responsible for an offense committed by the conduct of another if, acting with intent to promote or assist the commission of the offense, he solicits, encourages, directs, aids, or attempts to aid the other person to commit the offense. *Id.* § 7.02(a)(2) (Vernon 2003).

Lewis-Grant acknowledges murder is a lesser-included offense of capital murder.[2] She also does not complain the State was required to allege law of parties in the indictment.[3] Thus, her complaint appears to be that while the indictment only alleged she employed Hopkins to murder the complainant, the law-of-parties instruction included all the language in section 7.02(a)(2) of the Texas Penal Code—"solicits, encourages, directs, aids, or attempts to aid the other person to commit the offense"—and thus expanded the State's theory of liability. Lewis-Grant focuses on the phrase "by employing" in the indictment. Of the action verbs in the law-of-parties instruction, she

[2] It is well-established that murder is a lesser-included offense of capital murder. *See McKinney v. State*, 207 S.W.3d 366, 370 (Tex. Crim. App. 2006).

[3] The law of parties does not need to be pleaded in an indictment. *Vodochodsky v. State*, 158 S.W.3d 502, 509 (Tex. Crim. App. 2005).

contends "employ" is synonymous only with "solicit" or "direct." Because the instruction also included "encourages" and "aids, or attempts to aid," Lewis-Grant complains the State was allowed to prove "something less" than what was actually alleged in the indictment.

Lewis-Grant relies on Judge Clinton's concurring opinion in *Walker v. State*, 823 S.W.2d 247, 249–54 (Tex. Crim. App. 1991) (per curiam) (Clinton, J., concurring), for the proposition that a court should not summarily reproduce "abstract portions" of the definitions in section 7.02 of the Texas Penal Code. Additionally, Lewis-Grant argues *Johnson v. State*, 739 S.W.2d 299 (Tex. Crim. App. 1987), holds the law-of-parties instruction should be limited to the facts of a case. But as the State notes, *Walker* involved a jury charge in which there was no law-of-parties instruction provided to the jury. *See Walker*, 823 S.W.2d at 248. *Johnson* is also not instructive because the phrase "solicits, encourages, directs, aids, or attempts to aid" was not in the jury charge even though the State's theory of the case was that the appellant was guilty as a party to the offense. *See* 739 S.W.2d at 300. The *Johnson* court held it was error for the trial court to refuse the appellant's request for a more explicit application of the law of parties to the case. *Id*. at 305. In neither case does the court of criminal appeals conclude that section 7.02 of the Texas Penal Code can be broken or parceled into various pieces to include in the jury charge, and we decline to extend the law to do so. If anything, *Johnson* implied all the language in section 7.02 should be included in the jury charge if the State is seeking a conviction based on law of parties. *See id*. Lewis-Grant has, therefore, not cited a case on point that supports her argument. *See* Tex. R. App. P. 38.1(i). Furthermore, as the court of criminal appeals stated in *Chatman v. State*, if a defendant wants a "more explicit application of a particular method of acting as a party, it is his burden to request such or object to the charge." 846 S.W.2d 329, 332 (Tex. Crim. App. 1993). Lewis-Grant did neither. Accordingly, we overrule Lewis-Grant's fourth issue.

IV

Lewis-Grant complains the evidence is legally and factually insufficient to support her murder conviction. Specifically, she contends there is no evidence she planned to kill the complainant or "that she actually assisted in any way in committing the murder." Lewis-Grant also argues there is no evidence that there was an understanding between herself and Hopkins. The State contends the evidence is legally sufficient to prove Lewis-Grant committed murder under the theory of law of parties because she actively engaged in encouraging, aiding, or directing Hopkins to kill the complainant. The State asserts Lewis-Grant's intent can be inferred from circumstantial evidence such as acts, words, and conduct. Additionally, inconsistent statements, concealing incriminating statements, and implausible explanations to police officers are also pieces of circumstantial evidence the jury can use to convict a defendant. Furthermore, the State argues the evidence is factually sufficient to prove Lewis-Grant committed murder because there was an understanding between herself and Hopkins, and she had sufficient motive and opportunity to commit the crime.

A

In evaluating the legal sufficiency of the evidence to support a criminal conviction, we view all evidence in the light most favorable to the verdict and determine whether a rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. *Jackson v. Virginia*, 443 U.S. 307, 319 (1979); *Hooper v. State*, 214 S.W.3d 9, 13 (Tex. Crim. App. 2007); *Childs v. State*, 21 S.W.3d 631, 634 (Tex. App.—Houston [14th Dist.] 2000, pet. ref'd). We give deference to "'the responsibility of the trier of fact to fairly resolve conflicts in testimony, to weigh the evidence, and to draw reasonable inferences from basic facts to ultimate facts.'" *Hooper*, 214 S.W.3d at 13 (quoting *Jackson*, 443 U.S. at 318–19). The jury is the exclusive judge of the credibility of the witnesses and of the weight to be given their testimony, and it is the exclusive province of the jury to reconcile conflicts in the evidence. *Mosley v. State*, 983 S.W.2d 249, 254 (Tex. Crim. App. 1998). Hence, we do not reevaluate the weight

and credibility of all the evidence or substitute our judgment for the fact finder's. *King v. State*, 29 S.W.3d 556, 562 (Tex. Crim. App. 2000). Appellate courts merely ensure that the jury's decision was rational. *Muniz v. State*, 851 S.W.2d 238, 246 (Tex. Crim. App. 1993); *Harris v. State*, 164 S.W.3d 775, 784 (Tex. App.—Houston [14th Dist.] 2005, pet. ref'd). Additionally, we consider all of the evidence, whether admissible or inadmissible. *Clayton v. State*, 235 S.W.3d 772, 778 (Tex. Crim. App. 2007).

In evaluating the factual sufficiency of the evidence, we consider all the evidence in a neutral light. *Prible v. State*, 175 S.W.3d 724, 730–31 (Tex. Crim. App. 2005); *Newby v. State*, 252 S.W.3d 431, 435 (Tex. App.—Houston [14th Dist.] 2008, pet. ref'd). Our analysis must consider the evidence appellant claims is most important in allegedly undermining the jury's verdict. *Sims v. State*, 99 S.W.3d 600, 603 (Tex. Crim. App. 2003); *Newby*, 252 S.W.3d at 435. In a factual-sufficiency review, an appellate court asks whether the evidence supporting the verdict is so weak or so against the great weight and preponderance of the evidence as to render the verdict manifestly unjust. *Steadman v. State*, 280 S.W.3d 242, 246 (Tex. Crim. App. 2009). We do not substitute our judgment for the fact finder's judgment. *Drichas v. State*, 175 S.W.3d 795, 799 (Tex. Crim. App. 2005); *Newby*, 252 S.W.3d at 435. "'[A]n appellate court must first be able to say, with some objective basis in the record, that the great weight and preponderance of the . . . evidence contradicts the jury's verdict before it is justified in exercising its appellate fact jurisdiction to order a new trial.'" *Grotti v. State*, 273 S.W.3d 273, 283 (Tex. Crim. App. 2008) (quoting *Watson v. State*, 204 S.W.3d 404, 417 (Tex. Crim. App. 2006)). Although we may second-guess the jury to a limited degree, "the factual-sufficiency review should still be deferential, with a high level of skepticism about the jury's verdict required before a reversal can occur." *Id.*

The legal- and factual-sufficiency standards are the same for both direct and circumstantial evidence. *See King*, 29 S.W.3d at 565. Circumstantial evidence, by itself, may be enough to support the jury's verdict. *Kutzner v. State*, 994 S.W.2d 180, 184 (Tex.

Crim. App. 1999). 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

"Since an agreement between the parties to act together in a common design can seldom be proved by words, the State must often rely on the actions of the parties, shown by direct or circumstantial evidence to establish an understanding or a common design to commit the offense." *Miller v. State*, 83 S.W.3d 308, 314 (Tex. App.—Austin 2002, pet. ref'd). This agreement, if any, must be made before or contemporaneously with the criminal event. *Beier v. State*, 687 S.W.2d 2, 3–4 (Tex. Crim. App. 1985). In deciding whether a person participated in the offense, courts can review the events occurring before, during, and after the commission of the offense. *Id*. at 4. Each fact need not independently support the defendant's guilt, as long as the cumulative effect of all the incriminating evidence is sufficient to support the conviction. *Guevara v. State*, 152 S.W.3d 45, 49 (Tex. Crim. App. 2004). Additionally, motive is a "significant circumstance indicating guilt." *Id*. at 50. Inconsistent statements and implausible explanations to police officers are also probative of wrongful conduct and circumstances of guilt. *Id*.

1

Both Lewis-Grant and the State agree that Hopkins actually killed the complainant, and Hopkins testified he pleaded guilty to the murder. But Lewis-Grant suggests for the evidence to be legally sufficient to convict her of murder, the State needed to prove she intended for Hopkins to kill the complainant, she knew Hopkins planned on killing the complainant that particular night, and she assisted him in carrying out his plan. She points this court to *Vodochodsky v. State* for the proposition that for the evidence to be legally sufficient, a defendant must do more than simply know about a plan to commit a crime to be convicted as a party. 158 S.W.3d 502, 509–11 (Tex. Crim. App. 2005).

In *Vodochodsky*, two men were accused of luring police officers out to a home and then opening fire on them. *Id*. at 505. The State alleged the defendant knew his friend

wanted to kill police officers, assisted in killing and wounding multiple officers, and was guilty as a party to the offense. *Id*. at 504–08. The defendant argued he was simply present at the scene of the crime and he could not be held responsible for his friend's actions. *Id*. at 509. The court concluded the evidence was legally sufficient because a rational jury could find: (1) the defendant was present during the offense; (2) the defendant participated in the offense; (3) the defendant made several inconsistent statements; (4) the defendant knew his friend planned on killing police officers; and (5) the defendant desired to help his friend "wrap up his affairs" before he committed suicide. *Id*. at 509–10.

Vodochodsky is distinguishable from the case at bar. In *Vodochodsky*, the defendant's accomplice killed himself after the shoot-out with police officers. *Id*. at 507. All of the evidence linking the defendant to the crime was circumstantial. Here, not only is there circumstantial evidence to support the jury's verdict, but Hopkins testified he and Lewis-Grant had an understanding that he would kill the complainant. Hopkins stated Lewis-Grant constantly told him how much she hated the complainant, and she promised him various material items and the complainant's social-security benefits in exchange for killing him. Ranger Ramos testified Jamie corroborated Hopkins' statements and confession, which implicated Lewis-Grant in the death of the complainant. In reviewing the events occurring before, during, and after the commission of the offense, as stated in the facts above, there is evidence Lewis-Grant encouraged, assisted, aided, or attempted to aid Hopkins in killing the complainant. Furthermore, Lewis-Grant had a motive to kill the complainant, and she vocalized her hatred for the complainant and desire for him to die to numerous people. Lewis-Grant also made many inconsistent statements about where she and Hopkins were the night before the complainant died. Lewis-Grant tried to shift the police's and other witnesses' attention from her onto Jamie; a stranger, who was setting fire to her home and leaving dead animals in her yard; and even the complainant himself, who she claimed probably killed himself by using a bad dose of drugs.

Although not all the testimony is consistent, we give deference to "'the responsibility of the trier of fact to fairly resolve conflicts in testimony, to weigh the evidence, and to draw reasonable inferences from basic facts to ultimate facts.'" *Hooper*, 214 S.W.3d at 13 (quoting *Jackson*, 443 U.S. at 318–19). Taking together the testimony and evidence presented at trial, all amount to ample circumstantial and direct evidence that is legally sufficient to support the jury's verdict. Accordingly, we overrule Lewis-Grant's challenge to the legal sufficiency of the evidence supporting her murder conviction.

2

Concerning her factual-sufficiency argument, Lewis-Grant contends "the only evidence that [she] has the intent to promote or assist the commission of the offense came from Hopkins." Lewis-Grant emphasizes Hopkins never told her he was going to kill the complainant that night. She also claims there was not a clear understanding between herself and Hopkins; at best "there was an expectation that [Hopkins] would kill [the complainant]." Lewis-Grant argues "the overwhelming weight of the evidence mitigates against the conclusion that [she] solicited, encouraged, directed or attempted to aid Hopkins in committing the offense." She contends Hopkins' decision to kill the complainant was unilateral and is not sufficient to support her own murder conviction.

Although Lewis-Grant denies she and Hopkins had an understanding he would kill the complainant, a consideration of the evidence discussed above in a neutral light reveals the jury had enough direct and circumstantial evidence to rationally reach its conclusion. In conjunction with the evidence detailed in the sections above, the jury heard evidence demonstrating: (1) Lewis-Grant had motive to kill the complainant; (2) she had tried to either kill him before or hire Knutson to kill the complainant; (3) Lewis-Grant threatened the complainant that she knew someone with teardrop tattoos who could "get rid" of a person; (4) Lewis-Grant solicited, encouraged, assisted, aided, or attempted to aid Hopkins in killing the complainant; (5) she recounted multiple stories of the night before

the complainant's death to different people; (6) Jamie corroborated Hopkins' statements and confession; (7) Lewis-Grant stated whoever killed the complainant did her a favor, and she constantly thanked Hopkins for killing the complainant; and (8) she assisted in burning Hopkins' and Jamie's clothes after the offense was committed.

After reviewing all the evidence, and comparing the evidence supporting the verdict to the evidence contrary to it, we conclude that the proof of guilt is not so obviously weak or against the great weight and preponderance of the evidence as to render the verdict clearly wrong or manifestly unjust. We, therefore, hold the evidence is factually sufficient to support the jury's verdict, and we overrule Lewis-Grant's challenge to the factual sufficiency of the evidence supporting her murder conviction.

* * *

For the foregoing reasons, we affirm the trial court's judgment.

/s/ Jeffrey V. Brown
Justice

Panel consists of Justices Yates, Seymore, and Brown.

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