

Affirmed and Memorandum Opinion filed August 9, 2011.



In The

Fourteenth Court of Appeals

NO. 14-10-00410-CR

DARRELL A. JONES, Appellant

V.

THE STATE OF TEXAS, Appellee

**On Appeal from the 180th District Court
Harris County, Texas
Trial Court Cause No. 1179387**

MEMORANDUM OPINION

A jury convicted appellant Darrell A. Jones of murder and assessed punishment at twenty years' imprisonment. In a single issue, appellant argues that the evidence is insufficient to sustain his conviction due to the absence of sufficiently corroborated accomplice witness evidence. We affirm.

BACKGROUND

Kierra Blackshire testified that she and her boyfriend—the complainant Gerry Coles—were walking home from lunch one day in January 2008. As they approached the gated entrance to an apartment complex, a vehicle pulled out and stopped in their

path. The driver rolled down his window and tried to get Blackshire's attention by calling to her and making gestures. He spoke with a New Orleans accent. Coles approached the vehicle, pointed a gun inside, and attempted to shoot the driver, but the gun did not fire. The car sped off, and Coles and Blackshire split up to walk around the apartment complex. When they got back together in the parking lot, Blackshire heard and saw shots being fired at them from the entrance to the apartment complex. She also heard men yelling with New Orleans accents. Although she never identified the occupants of the vehicle, she believed they were the people shooting at Coles.

Kenneth Stevenson testified that he was appellant's neighbor at the apartment complex in January 2008. Moments before the murder, he saw both appellant and the accomplice witness Derrick Portis walk by him with pistols in their pants. From a distance, Stevenson followed the pair as they ran near the front entrance of the apartment complex. Although Stevenson could not see Coles, he saw appellant and Portis firing multiple rounds in the parking lot as they backed up toward the front entrance. He heard twelve to sixteen gunshots from multiple guns. When the shooting stopped, Coles was down. He died from gunshot wounds. At the crime scene, police later recovered eighteen .40-caliber shell casings that had been fired from three different guns, all of which were pistols.

Portis testified as an accomplice witness. He and appellant were passengers in the vehicle exiting the apartment complex when the driver stopped and tried to flirt with Blackshire. Portis saw Coles point a gun at the driver and try to shoot, but the gun jammed. After the driver pulled away, appellant retrieved a .40-caliber gun from the glove compartment and another passenger pulled a gun out of his pocket. Appellant said, "Come on, let's go get them." Portis did not have a gun, so he went to his mother's friend's apartment. Appellant came to the apartment and gave Portis a .40-caliber gun. They left the apartment together but then split up to search for Coles. Portis heard gunshots, and then he saw Coles reaching for his weapon. He fired at Coles until he ran out of ammunition, but he did not hit Coles. Portis and appellant rendezvoused near the

front entrance to the apartment complex, and Portis walked home to Missouri City. The next morning, he left for New Orleans.

Stevenson testified that he never saw appellant return to his apartment. When police later went to appellant's apartment, they found the door open, furniture inside, and the electricity shut off. Both appellant and Portis were apprehended in New Orleans about eight months after the murder.

Appellant was indicted for murder, and the jury was instructed that it could convict appellant as the primary actor or as a party to the murder. The jury found appellant guilty and assessed punishment at twenty years' imprisonment.

ANALYSIS

A conviction obtained in reliance upon accomplice testimony must be supported by sufficient corroborating evidence tending to connect the defendant with the offense committed. TEX. CODE CRIM. PROC. ANN. art. 38.14 (West 2005). When reviewing the sufficiency of the evidence to corroborate accomplice testimony, we eliminate the accomplice testimony and then examine the remaining portions of the record to see if there is any evidence that tends to connect the defendant with the commission of the offense. *Malone v. State*, 253 S.W.3d 253, 257 (Tex. Crim. App. 2008). The corroborating evidence need not rise to the level of proof beyond a reasonable doubt. *Id.* Instead, the evidence must simply link the defendant to the commission of the offense and show that rational jurors could conclude that the evidence sufficiently tended to connect the defendant to the offense. *Simmons v. State*, 282 S.W.3d 504, 508 (Tex. Crim. App. 2009).

Appellant primarily argues that two non-accomplice witnesses, Blackshire and Stevenson, were lying because they made inconsistent statements and withheld information during the investigation of the murder. Appellant argues this case is one in which "the credibility of a witness is so undermined that a reviewing court cannot have confidence in a verdict supported by the witnesses' testimony." However, we must view

the evidence in the light most favorable to the jury's verdict, and the jury is the exclusive judge of the credibility of witnesses and the weight to be given their testimony. *Brown v. State*, 270 S.W.3d 564, 567–68 (Tex. Crim. App. 2008). The jury in this case heard fully that Blackshire initially withheld information from police and identified someone else as being present at the time of the shooting. The jury also heard that Stevenson had initially told police he was at work the day of the murder, and he had a conviction for theft and was on probation for burglary at the time he testified. But viewing the evidence in the light most favorable to the verdict, we presume the jury found Blackshire and Stevenson credible. *See id.* at 568.

With this view of the evidence in mind, the following non-accomplice evidence tends to connect appellant to the crime:

- Stevenson saw appellant and Portis walk nearby his apartment with handguns protruding from their pants, and ballistics testing of shell casings from the scene revealed that three different pistols were fired.
- Stevenson saw appellant and Portis firing handguns and running to the front of the apartment complex at the time of the murder.
- Blackshire saw Coles being fired upon from the front of the apartment complex, and Coles returned fire.
- Stevenson testified that appellant and Portis had distinct New Orleans accents; Blackshire heard men shouting at the crime scene with New Orleans accents; and the man who spoke to her from the vehicle earlier that day had a New Orleans accent.
- Stevenson never saw appellant return to his apartment; police found the front door open and furniture in the apartment, but there was no electricity; and appellant was later apprehended in New Orleans.

Evidence placing appellant at the crime scene in Portis's company at the time of the murder may be combined with other suspicious circumstances to connect appellant to the crime. *See Smith v. State*, 332 S.W.3d 425, 443 (Tex. Crim. App. 2011); *Hernandez v. State*, 939 S.W.2d 173, 178 (Tex. Crim. App. 1997). Evidence that appellant possessed a weapon "merely similar" to the guns fired at the crime scene may be considered in

corroborating accomplice testimony. *See Hernandez*, 939 S.W.2d at 178. The evidence in this case also supports a reasonable inference that appellant fled the scene, which may be considered in corroborating accomplice testimony. *See id.* (holding there was a reasonable inference of flight based on the defendant's absence from his residence, removal of furniture, failure to attend a planned event, and failure to return videotapes to a rental store). Finally, and most importantly, Stevenson testified that he saw appellant extend his arm out and fire a gun multiple times in the parking lot where Coles was shot. All of this evidence tends to connect appellant to the murder, either as a primary actor or a party to the crime.

We overrule appellant's sole issue and affirm the trial court's judgment.

/s/ Sharon McCally
Justice

Panel consists of Justices Frost, Jamison, and McCally.

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