Affirmed and Memorandum Opinion filed August 23, 2011.

In The

Fourteenth Court of Appeals

NO. 14-10-00437-CR

CLYDE HENRY CRUMP, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the 179th District Court
Harris County, Texas
Trial Court Cause No. 1119150

MEMORANDUM OPINION

Appellant, Clyde Henry Crump, appeals from his conviction for capital murder. A jury found appellant guilty, and he was sentenced to life in prison without the possibility of parole. On appeal, appellant contends that (1) the evidence is legally insufficient to sustain his conviction; (2) accomplice witness testimony was not sufficiently corroborated; (3) the trial court erred in failing to instruct the jury that certain witnesses were accomplices; (4) the court erred in failing to instruct the jury that one accomplice witness cannot corroborate the testimony of another accomplice witness; and (5) he received ineffective assistance of counsel. We affirm.

I. Background

The State's theory of the case was that appellant hired another individual, Brandon Brown, to kill complainant, Eugene Bourgeois, whom appellant suspected of having orchestrated a violent home invasion of appellant's apartment.

The first witness called was Deputy Douglas Levy of the Harris County Sheriff's Department. Levy testified that on February 21, 2007, he responded to a call reporting a possible home invasion at the Camden Station Apartments. Appellant met Levy at the door to appellant's apartment and explained that two men whom he did not know had forced their way into his apartment, hit him on the head with a pistol, tied him up, and stolen some of his property. Appellant was bleeding from his head, and Levy described appellant's demeanor at the time as "angry." Levy also interviewed Requitta Henry at the apartment. Henry reported that she had woken to find a man pointing a shotgun at her.

On February 27, Levy responded to a call reporting a possible shooting and death at the Camden Station Apartments. Eugene Bourgeois had been shot and killed at that location. Information obtained at the scene indicated a suspect in the shooting possibly lived in the same apartment where Levy had responded to a home invasion call six days before. Levy interviewed Juanita Ornelas, who told him that she heard four gunshots outside her apartment, and when she looked out the window, she saw a young black male running through the parking lot carrying a large gun. She could not identify the man by name but indicated she believed he lived at the same apartment that Levy knew to be appellant's apartment.

Sergeant Robert Spurgeon, also of the Harris County Sheriff's Department, testified that between February 21 and 26, 2007, he was assigned to investigate the purported home invasion at appellant's apartment. In a telephone conversation, appellant told Spurgeon that he believed that a black male whom he knew as "Tank" had "set him up." Appellant, however, was unable to provide a real name or address for Tank.

Spurgeon did not hear from appellant again after that telephone call. Numerous witnesses explained that "Tank" was a nickname associated with the decedent, Eugene Bourgeois.

Detective James Dalrymple is a crime scene investigator with the sheriff's office. On February 27, 2007, he responded to a call at the Camden Station Apartments. He generally described the scene where Bourgeois's body was found, including that the body was "lying partially behind [some] shrubs, partially behind [an] air conditioning unit." Five shotgun shells were discovered nearby, along with other indications that a shotgun had been recently discharged. Dalrymple opined that the wound pattern found on Bourgeois's body was consistent with a shotgun blast. A pistol was discovered in Bourgeois's pocket, and his vehicle was in the parking lot. Additionally, Sara Doyle, with the Harris County Medical Examiner's Office, testified that Bourgeois died as a result of wounds caused by a shotgun blast.

Amos Oladimeji testified that around 6:30 a.m. on February 27, 2007, he arrived at the Camden Station Apartments to pick up workers for his landscaping business. He saw a vehicle back into a parking space and then someone emerged from the driver's side, wearing a hood and carrying a long gun wrapped in something. The man from the vehicle chased another man and then shot him multiple times. The victim then fell on an air conditioning unit. Because of the hood and the darkness, Oladimeji was unable to see the shooter's face. The shooter quickly returned to his vehicle, and the vehicle left the parking lot. Oladimeji described the vehicle as a "dark, old model car." He did not look inside the car and thus was unable to tell how many people might have been inside.

In his testimony, Sergeant Henry Palacios of the sheriff's department described interviewing witnesses on the morning of the shooting, including Juanita Ornelas and her sister and brother-in-law (the Hernandezes). From them, Palacios received a description of an older, light-brown vehicle belonging to the Hernandezes' neighbor. Palacios further ascertained that appellant lived next door to the Hernandezes. Subsequently,

Palacios went to the Camelot Inn to retrieve two duffel bags believed to have been left at the hotel by a suspect in the shooting.[1] Inside one of the bags was a card addressed to "Elvira Brown" from Brandon Brown, a journal containing both of those names and a photograph Palacios identified as being of Elvira and Brandon.

Elvira Lewis testified that in February 2007, she was 17 years old and living with Brandon Brown at the Camden Station Apartments. Brown sold cocaine to pay the couple's bills. She identified appellant as a friend of Brown's whom they called "Slug." Brown would buy marijuana from appellant and sometimes smoke it with him. She further acknowledged that she knew someone who went by the name "Tank" because she sometimes saw him around the apartment complex. She described one "run-in" that they had when she did not want to talk to Tank because she didn't know him and already had a boyfriend. Brown came downstairs during the altercation and "got into it" with Tank, telling Tank to stay away from Lewis. According to Lewis, Brown was "pretty angry." Another time, Tank knocked on their door and asked Brown to "cook him up some crack cocaine"; Brown refused, Tank tried to push his way in, and Brown pushed him out. The two incidents occurred a week or two apart and about a month before the shooting. After one of the incidents, Tank brought someone by Brown and Lewis's apartment. Lewis felt threatened by this and told Brown so.

Lewis also acknowledged that she had informed Brown that Tank wanted to hire someone to kill a friend of Brown's; the friend went by the name "C. Slugger." She told him that if Tank "would do it to [C. Slugger], he would definitely do it to Brandon."

Lewis further testified that appellant had told Brown, and Brown, in turn, told her, that Tank had arranged to have someone break into appellant's apartment. Appellant said, "I know Tank broke into my house, and I'm going to get him," and "he not going [sic] to bring it to nobody's house, me and my goons going [sic] to get him." After the

[1] As will be discussed below, a manager at the motel reported the two bags as having been left in rooms at the motel.

break-in, Brown began visiting with appellant more often. Brown also began "acting weird . . . like he was scared about something." Brown told Lewis about a deal he had with appellant. Lewis also overheard appellant tell Brown that he would pay Brown to kill Tank. She believed that Requitta Henry was also present during that conversation. Lewis did not know of a particular amount being mentioned but did know the payment was to be made afterwards. On the morning that Bourgeois was killed, Lewis and Brown packed bags so that they could go to a hotel because appellant had said that Brown was going to kill Tank.

While packing their bags, Brown appeared nervous and scared. Afterwards, they went to appellant's apartment where appellant and Henry were. Around 5:30 a.m., they all got into appellant's car in the parking lot. Appellant was sitting in the driver's seat, Requitta was in the front passenger seat, Lewis was in the rear passenger's-side seat, and Brown was in the rear driver's-side seat. Brown had brought his shotgun with him to appellant's apartment and then to the car. It was wrapped in a pillow case.

When Tank drove into the parking lot and parked, the four people in appellant's car "ducked down" and then Brown got out of the vehicle and began shooting. He shot four times and then ran back to the car. Appellant got out and opened the trunk so that Brown could put the gun in. They then drove to the Camelot Inn. Once in a room at the hotel, appellant told them that it was their room and that he "and his mama [were] going to get rid of the gun." Later, appellant and Henry returned to give Brown $60 and some cigarettes. Lewis also heard appellant make the statement at this time: "I'll give you the rest."

Lewis and Brown subsequently went to the apartment of one of Brown's friends, and there Lewis cut Brown's hair to disguise his appearance. Brown took a bus to Louisiana later that night in order to see his mother. Lewis said that she had not been promised anything in return for her testimony. After giving a statement to the police, she pleaded guilty to misdemeanor failure to report a felony and served time in jail for the

offense. After the shooting, Lewis learned that she was pregnant with Brown's child. At the time of trial, the child was two years old.

Requitta Henry testified that she met appellant when she went to purchase marijuana from him and knew him by the name "Slug." They became romantically engaged and she frequently stayed at his apartment. Appellant's mother also was living there. Henry described one morning around 6:00 a.m. when someone entered appellant's apartment and told her not to move and that they were "here for [her] man." She stayed with her head under the covers and did not see anyone. After they left, she found appellant with his hands tied and blood coming from his head. Appellant's cell phone and wallet were missing along with some money and marijuana. Appellant called the police. Appellant told her that he thought a man named "Tank had something to do with" the robbery. Appellant said the he was going to "make example of him [sic]." Regarding Bourgeois, Henry stated that she knew him as "Tank" and appellant sometimes talked with him, but she never had any interaction with him. She did not know whether or not he had anything to do with the robbery. She knew from Brown that Bourgeois regularly drove a child from the apartment complex to school in the mornings. On the morning of February 27, 2007, Henry, Brown, and Lewis were at appellant's apartment. At some point, the four of them went to appellant's car. They sat, listened to the radio, and talked. There was a shotgun in the car. When Brown got out of the car, Henry heard shots. She had her head down, however, and did not see what happened. Brown got back in the car, said "I got him," and they drove to a hotel named "Camelot." Appellant's mother had rented two rooms earlier that morning at the hotel. Brown and Lewis stayed in one room and appellant's mother in the other.[2] After giving Brown money for food, appellant woke his mother up so she could go to work. He told her, "It's done, come on, we got to go." Henry then parted company with appellant and appellant's mom. Appellant later told

[2] It is unclear from Henry's testimony when or how appellant's mother got to the hotel room.

Henry that they "went to bury the gun." Henry said that she had not been arrested and that she was not promised anything for testifying and had been subpoenaed.

Morris Crosby testified that in early 2007, he was 14 and living at the Camden Station Apartments. He considered Brown, who was 15 at the time, to be like a brother to him. At that time, Crosby's mother was paying Bourgeois to drive Crosby to school each day. Based on conversations with Brown, Crosby knew that Brown did not like Bourgeois. Crosby also saw Brown and Bourgeois have "run-ins." After appellant's apartment was robbed, Crosby had conversations with Brown about "getting back at" Bourgeois.

According to Crosby, appellant also specifically told him that Bourgeois had set up the robbery of his apartment and "was going to get what he deserved." Appellant further expressed concern about what could have happened if one of his children had been present at the time of the robbery. Neither Brown nor appellant talked about "getting back at" Bourgeois prior to the home invasion. During this period, appellant kept asking Crosby for the exact time when Bourgeois picked him up for school in the mornings. Crosby also talked to Brown about whether Bourgeois was going to pick Crosby up for school on the day of the shooting.

The morning of the shooting, Brown came to Crosby's apartment to say goodbye. He left at around 6:20 a.m., and Crosby saw him pick up something from outside the apartment that was long and wrapped in cloth of some sort. Crosby thought it was a gun. Around 6:45 a.m., Crosby heard Bourgeois honk his horn. Crosby looked out and saw Bourgeois's car and shortly thereafter heard gunshots. Crosby heard his mom say, "That's Brandon," but she would not let Crosby go outside.

Tony Patel, manager of the Camelot Inn, testified that Laverne Barlette Crump rented two rooms at the motel at 2:57 a.m. on February 27, 2007. He also stated that a package of items left in the rooms was handed over to police.

Elizabeth Simpson testified that in February 2007, she was a property manager for Camden Station Apartments. Between February 21 and 27, appellant came to her office and complained that two men had broken into his apartment, pistol-whipped him, and stolen his wallet. Appellant asserted that it was "some dude from Louisiana." Appellant wanted out of his lease, but Simpson explained the request would need to be made in writing and the decision to release him was not within her authority. Appellant subsequently submitted a letter to her explaining that he wanted out of his lease due to the home invasion and not feeling safe living there anymore. The day of the shooting, February 27, appellant returned to her office and asked about the status of his request to be excused from the lease, but Simpson did not have an answer for him yet.

George Bergeron, a police officer with the Hammond, Louisiana police department, testified that on February 28, 2007, he responded to a report that a juvenile wanted to discuss a homicide that had occurred in Houston. At an apartment in Hammond, Bergeron spoke with Brandon Brown and Brown's mother. Brown told Bergeron three different versions of the events surrounding Bourgeois' murder.

Rodney Kemper testified that in 2007, he used to buy marijuana from and "hang out" with appellant. At some point, appellant told Kemper that his apartment had been robbed and that he thought someone named Tank was behind it. Appellant also told Kemper that Tank was "going to get it."

Sergeant Eric Clegg of the Harris County Sheriff's department was the lead investigator in the murder investigation. He travelled to Louisiana to interview Brown. Brown told him that appellant had paid him to kill Bourgeois. According to Clegg, he had no doubt Brown was telling him the truth because Clegg knew details about the crime scene Officer Bergeron did not.

Shannon Rosemond testified that she was Bourgeois's fiancée at the time of his death. She described appellant (whom she referred to as "Slug") and Bourgeois having arguments because appellant had been selling drugs at an apartment complex and

Bourgeois began doing so. She also learned from Bourgeois about his altercations with appellant and Brown.

Brandon Brown testified that he understood that he had the right not to testify and had not been offered any deal by the district attorney's office in exchange for his testimony. He was 15 in February 2007 and was living in an apartment at the Camden Station Apartments, selling drugs and robbing people for money. Brown acknowledged having had several conflicts with Bourgeois, including one time when Bourgeois sold drugs to a customer before Brown could, another when Bourgeois wanted to enter Brown's apartment and have Brown prepare cocaine for him but Brown refused, and another when Bourgeois was bothering Elvira Lewis, Brown's girlfriend. Brown regularly bought marijuana from appellant and "hung out" with him. Appellant told him on the day of the home invasion that he thought Bourgeois had sent someone to do it. This was apparently based on the fact Bourgeois left a message on appellant's voicemail that morning and the robbers had asked where appellant's gun was and Bourgeois knew that appellant had a gun in his house. Appellant said that "[h]e was going to get somebody to get him."

At some point, Brown told appellant about the fact that Bourgeois took Crosby to school each day. Appellant told Brown that he needed someone to kill Bourgeois, that he was going to pay someone to do it, and that he knew the going rate. Around midnight on the night before the shooting, appellant came to Brown's apartment and told Brown that he wanted him to kill Bourgeois. Appellant indicated to Brown that he was going to pay him to do it and that he (appellant) knew the "going rate." Appellant said that he was going to rent a hotel room and pay and take care of Brown after the shooting. Brown could also stay with him afterwards. Appellant never mentioned a specific dollar figure. He then left Brown's apartment to procure the hotel room.

Brown stated that although he did not tell Lewis or Crosby specifically what was going to happen to Bourgeois, he did mention to them that Bourgeois was going to get

some form of retaliation. After his midnight conversation with appellant, Brown knew that he was going to shoot Bourgeois and that appellant was going to "pick up the shells." When appellant left, Brown began packing his clothes and told Lewis to do the same. At some point, appellant contacted Brown to let Brown know that he was back at the apartment complex. Appellant also told Brown to make sure Bourgeois was coming to pick up Crosby for school. Brown then went by Crosby's house to tell Crosby that he was leaving and to make sure Bourgeois was still coming that morning.

Brown thereafter took his shotgun to appellant's apartment, where appellant, Henry, and Lewis were already gathered. While at the apartment, appellant told Brown that because Brown was younger, Brown would not get as much time if he got caught. After about an hour, they all went to appellant's vehicle, a brown Chrysler. When Bourgeois's car pulled into the parking lot, they all ducked down in the car. Brown then exited the car with the shotgun. Bourgeois saw Brown and began running, Brown fired the shotgun, and Bourgeois fell to the ground and started to crawl. Brown pursued and shot Bourgeois until the gun was empty. He then ran back to the car, and appellant "turned on a song" as they drove away.

They proceeded to the Camelot Inn, where Brown and Lewis went to one room, and appellant and Henry to another. Appellant gave Brown $60 and told him that he would take him to get his hair cut. Later, Lewis trimmed Brown's hair, and then he got a haircut at a barber shop. He then left on a bus to Louisiana. Once there, he soon began telling people (his mother, grandparents, pastor, and pastor's wife) about events in Texas because he wanted to do what was right. He claimed that he had not known how to get out of it before the shooting took place. He did not just leave because he did not want to abandon Lewis, and his mother had said that Lewis could not come live with them. His mother told him he needed to talk to the police, so the Hammond police were called, and he began talking. At some point, he changed his story and began saying appellant was the shooter because he became worried about what was going to happen to him. He later

decided he could trust an officer from Texas and told the real story. He said that he understood that a murder for hire is a capital murder and that is a more serious crime than mere murder.

On cross-examination, Brown acknowledged that a different friend of his, Willy Williams, had been robbed and believed that Bourgeois was behind it. He also said that Crosby had a headache on the morning of the shooting and contemplated not going to school, but Brown talked him out of calling Bourgeois to cancel his ride. He acknowledged telling an officer a price for the murder at one point but it was not the truth.

Appellant testified that he was robbed in his apartment on February 21, 2007. He told apartment complex management that he did not feel safe and wished to move. Brown told him about who was behind the robbery, but appellant says that he did not act on that information or ask Brown to act on that information. He felt like a big brother to Brown.

Appellant denied that he went to Brown's apartment the night before the shooting. That morning, however, Brown came to appellant's apartment while appellant was preparing to take his mother to work. Later, when appellant left his apartment, he saw Brown standing beside some bushes with a shotgun in his hand. Appellant told Brown to get in his car; Brown did so, and appellant tried "to talk some sense into him." When another car pulled into the parking lot, Brown got out of appellant's car, and then appellant heard several gunshots. There was no agreement between them regarding what Brown did. Brown then jumped back in appellant's car, and appellant drove the two of them plus Henry and Lewis to a hotel, where appellant's mother had rented rooms because they did not feel safe staying in the apartment. Appellant gave Lewis $60 so that she and Brown could eat.

On cross-examination, appellant acknowledged that he wanted the robbers to pay for what they did. He explained that he couldn't rent a hotel room himself because the

robbers had taken his wallet which held his identification, and thus he needed his mother's assistance. He admitted that he had learned from Brown that Bourgeois was scheduled to pick up Crosby. He further acknowledged that he did not stay at the hotel after the shooting but immediately went back to his apartment, while avoiding the police officers at the complex. He said that he did not report the shooting to police, even after he saw himself on the news as a suspect, because he did not want to be involved. He admitted telling Henry that he was going to "make an example of" Bourgeois and telling Rodney Kemper that Bourgeois was "going to get it, he's going to get what's coming to him." He contended that he rented the room at the hotel at 10:00 p.m. the day before the shooting and not in the middle of the night as hotel records showed.

II. Sufficiency of the Evidence

In his first two issues, appellant contends that the evidence is legally insufficient to support his conviction for capital murder. We review the legal sufficiency of the evidence under the standard set forth in *Jackson v. Virginia*, 443 U.S. 307 (1979). *Gear v. State*, 340 S.W.3d 743, 746-48 (Tex. Crim. App. 2011). Under that standard, we view all of the evidence in the light most favorable to the verdict to determine whether a rational jury could find the essential elements of the crime beyond a reasonable doubt. *Isassi v. State*, 330 S.W.3d 633, 638 (Tex. Crim. App. 2010); *Williams v. State*, 235 S.W.3d 742, 750 (Tex. Crim. App. 2007). This court does not sit as a thirteenth juror and may not substitute its judgment for that of the fact finder by re-evaluating the weight and credibility of the evidence. *Isassi*, 330 S.W.3d at 638; *Williams*, 235 S.W.3d at 750. Instead, we defer to the fact finder to fairly resolve conflicts in the testimony, weigh the evidence, and draw reasonable inferences supported by the evidence. *Williams*, 235 S.W.3d at 750. Our duty as a reviewing court is to ensure that the evidence presented actually supports a conclusion that the defendant committed the crime. *Id.*

As properly set forth in the jury charge, a person commits capital murder if, among other possibilities, he intentionally commits murder by employing another person

"to commit the murder for . . . the promise of remuneration." Tex. Penal Code § 19.03(a)(3). Murder is properly defined as "intentionally or knowingly caus[ing] the death of an individual," or "intend[ing] to cause serious bodily injury and commit[ing] an act clearly dangerous to human life that causes the death of an individual." *Id*. § 19.02.

A. Mental State

In his first issue, Appellant asserts that there was no evidence to establish he possessed the requisite mental state for capital murder, *i.e.*, that he acted with intent for Bourgeois to die. Appellant insists that he tried to talk Brown out of committing the crime and points out that Brown did not testify that he told anyone beforehand that appellant hired him to kill Bourgeois. According to appellant, Brown had a will of his own and a motive of his own for wanting Bourgeois dead. Brown also initially lied to the Louisiana police officer, telling him that appellant was the shooter. Appellant further points to evidence suggesting he desperately wanted out of his lease after the home invasion at his apartment.

While the jury may well have taken all of this evidence into account, there was ample evidence to support its ultimate conclusion that appellant intended for Bourgeois to be killed and acted on that intention. As detailed above, appellant's own testimony, as well as that of several others, demonstrated that he had a motive for wanting Eugene Bourgeois killed: information or belief that Bourgeois had been behind a violent home invasion of appellant's apartment.[3] There was also evidence that prior to the shooting, appellant indicated that he was going to get revenge on Bourgeois for the home invasion, and appellant made inquiries into if and when Bourgeois was going to arrive at the apartments on the morning of the shooting.

[3] The jury, as sole judge of the credibility of the witnesses, was free to believe parts, while disbelieving other parts, of appellant's testimony. *E.g., Dockstader v. State*, 233 S.W.3d 98, 102 (Tex. App.—Houston [14th Dist.] 2007, pet. ref'd).

It was further clearly established that Brandon Brown shot and killed Bourgeois. By his own testimony, and as corroborated by others, appellant was present at the scene of the shooting and aided the shooter, Brown, in the immediate aftermath by driving him from the scene, putting him up in a hotel room, and providing money for food. There was also testimony from multiple sources, principally Brown and Elvira Lewis, from which the jury could have concluded that appellant promised to pay Brown for shooting Bourgeois. In short, the evidence that appellant possessed a motive for wanting Bourgeois killed, promised to pay Brown for killing Bourgeois, and then aided Brown in the aftermath of the shooting was ample evidence to demonstrate the required mental state for capital murder. The jury was well within its authority to reject evidence suggesting Brown acted completely on his own. *See Williams*, 235 S.W.3d at 750 (explaining that the jury is responsible for assessing the credibility of witnesses and resolving conflicts in the evidence). We overrule appellant's first issue.

B. The Promise of Remuneration

In his second issue, appellant argues that the evidence is insufficient to demonstrate that he employed another to commit murder for the promise of remuneration. Specifically, appellant asserts that the credibility of both Brown and Lewis—the two key witnesses regarding a promise of payment for killing Bourgeois—was impeached by prior inconsistent statements. Regarding Brown, appellant again points out that he originally told the Louisiana officer that appellant was the shooter. Regarding Lewis, appellant asserts that she contradicted herself in her testimony, saying at different times that she heard appellant tell Brown that he would pay Brown to kill Bourgeois and that she did not know anything about a discussion of money at appellant's apartment.

The jury again exercised its responsibility to evaluate the credibility of witnesses and to resolve conflicts in the evidence. *See id.* Here, the jury could have believed Brown when he explained that he initially lied to the Louisiana officer because he was

scared and did not trust the officer. The jury also could have believed Lewis's unequivocal testimony on direct examination that she heard a promise of remuneration and discounted her more jumbled, less-coherent cross-examination testimony suggesting she did not know anything specifically about the money to be paid. Consequently, we find appellant's arguments without merit and overrule his second issue.

III. Corroboration of Accomplice Testimony

In his third issue, appellant contends that there is insufficient evidence to corroborate the testimony of Brown, Lewis, and Requitta Henry, whom appellant contends were accomplice witnesses. Under article 38.14 of the Texas Code of Criminal Procedure, "[a] conviction cannot be had upon the testimony of an accomplice unless corroborated by other evidence tending to connect the defendant with the offense committed; and the corroboration is not sufficient if it merely shows the commission of the offense." Tex. Code Crim. P. art. 38.14. In conducting our review under the article, we disregard all of the accomplice testimony and examine the remaining record for evidence that "tends to connect the accused with the commission of the crime." *Castillo v. State*, 221 S.W.3d 689, 691 (Tex. Crim. App. 2007). The corroborating evidence need not be sufficient to establish guilt beyond a reasonable doubt or even directly link appellant to the commission of the crime; it must merely "tend to connect" appellant to the offense. *Id*.

For the sake of our analysis under this issue, we assume that Brown, Lewis, and Henry all were accomplices.[4] Appellant himself provided testimony establishing a motive: information or belief that Bourgeois had orchestrated a violent home invasion of appellant's apartment. Rodney Kemper and Morris Crosby also testified that appellant told them that "Tank" (Bourgeois) was behind the robbery and was "going to get it" or

[4] At the conclusion of trial, defense counsel requested an accomplice witness instruction pursuant to article 38.14 only for Brown. In issues four and five, appellant contends on appeal that the trial court erred in not *sua sponte* including accomplice witness instructions concerning Lewis and Henry. And in issue seven, appellant contends that he received ineffective assistance of counsel, in part, because counsel failed to request instructions for Lewis and Henry as accomplices.

"was going to get what he deserved." Sergeant Robert Spurgeon stated appellant told him that a man called "Tank," a known alias for Bourgeois, was behind the robbery. Crosby further stated that appellant had repeatedly inquired as to whether and when Bourgeois would be arriving at the apartment complex on the day of the murder. Appellant acknowledged having made threats against Bourgeois. He further placed himself at the scene of the crime and admitted driving the get-away car, taking appellant to a hotel room which had been rented shortly before the shooting, and providing money for food.

Even disregarding the testimony of the alleged accomplices—Brown, Lewis, and Henry—the evidence tended to connect appellant to Bourgeois' murder. Consequently, we overrule appellant's third issue.

IV. Jury Instructions for Other Alleged Accomplices

In his fourth and fifth issues, appellant argues that the trial court erred in failing to instruct the jury regarding whether Elvira Lewis and Requitta Henry were accomplice witnesses whose testimony required corroboration. Although the charge did include, as discussed above, the general language pursuant to article 38.14 on corroboration of accomplice witnesses, neither Lewis nor Henry were identified as accomplice witnesses in the charge and the jury was not asked to determine whether they were accomplice witnesses. *See generally Cocke v. State*, 201 S.W.3d 744, 747-48 (Tex. Crim. App. 2006) ("Unless the evidence clearly shows that the witness is an accomplice as a matter of law, *e.g.*, the witness has been, or could have been, indicted for the same offense, a question about whether a particular witness is an accomplice is properly left to the jury with an instruction defining the term 'accomplice.'").

Appellant, however, did not make any request or objection regarding the absence of accomplice witness instructions for these witnesses. Therefore, in order to be entitled to reversal on these issues, he has to show both that the trial court erred and that

egregious harm resulted. *See Allen v. State*, 253 S.W.3d 260, 264 (Tex. Crim. App. 2008).

The purpose of accomplice witness instructions is not to cast suspicion on the testimony provided by such witnesses or to encourage jurors to give less weight to their testimony; rather, such instructions simply remind the jury, as is statutorily required, that it cannot use the accomplices' testimony to convict the defendant unless there also exists some corroborating evidence tying the defendant to the offense. *See Cocke*, 201 S.W.3d at 747; *Herron*, 86 S.W.3d at 632. When the egregious harm standard applies, the omission of an accomplice witness instruction is generally harmless unless the corroborating evidence is deemed so weak and unconvincing as to render the State's overall case for conviction clearly and significantly less persuasive. *Herron*, 86 S.W.3d at 632; *Saunders v. State*, 817 S.W.2d 688, 692 (Tex. Crim. App. 1991)). To determine the strength of corroborating evidence, we examine (1) its reliability and believability, and (2) the degree to which it tends to connect the defendant to the offense. *Herron*, 86 S.W.3d at 632. If corroborating evidence is weak and contradicted, and therefore does not have a strong tendency to connect the defendant to the crime, egregious harm may be present. *See id*. at 632-33 (discussing the facts and outcome of *Saunders*).

Here, even assuming that there was some evidence presented suggesting that Henry and Lewis were accomplice witnesses, the corroborating evidence was such that egregious harm did not result from the omission of accomplice witness instructions regarding them. As discussed above, appellant himself provided testimony establishing that he had a motive and had voiced threats against Bourgeois, was present with Brown at the scene of the crime, drove Brown from the scene after the shooting to a hotel room which had been previously rented, and provided Brown with money for food. Furthermore, Kemper and Crosby explained that appellant had made threats against Bourgeois pertaining to the violent home invasion of appellant's apartment, Sergeant Spurgeon said appellant identified "Tank" as being behind the robbery, and Crosby stated

appellant had repeatedly inquired when Bourgeois would be arriving at the apartment complex on the day he was killed. This evidence clearly connected appellant to the crime, and there is no compelling innocent explanation for the level of appellant's involvement with Brown during and after the shooting. *See id*. at 633-34 (analyzing issue under less burdensome "some harm" standard because error was preserved).

Any error by the trial court in failing to sua sponte charge the jury on the question of whether Lewis and Henry were accomplice witnesses did not result in egregious harm. Accordingly, we overrule appellant's fourth and fifth issues.

V. Corroboration of One Accomplice by Another

In issue six, appellant contends that the trial court erred in not instructing the jury that one accomplice witness's testimony cannot be corroborated by another accomplice witness's testimony. *See Chapman v. State*, 470 S.W.2d 656, 660 (Tex. Crim. App. 1971) (holding that the testimony of accomplice witnesses could not be used to corroborate each other); *Taylor v. State*, 7 S.W.3d 732, 743-37 (same). Here, apparently because both defense counsel and the trial judge considered Brown to be the only accomplice witness, no such instruction was requested or given. Consequently, appellant's conviction may be reversed only upon a showing that the trial court erred and such error resulted in egregious harm to appellant. *See Taylor*, 7 S.W.3d at 737.

In *Taylor*, we applied the same type of egregious harm analysis as we employed above concerning the failure to charge the jury regarding Lewis and Henry as accomplice witnesses. *See id*. (citing *Saunders*, 817 S.W.2d at 692). Applying that same analysis under this issue, we again conclude that even assuming the trial court erred in failing to instruct the jury that accomplice witnesses cannot corroborate one another's testimony for article 38.14 purposes, appellant did not suffer egregious harm as a result. As detailed above, considerable corroborating evidence in this case came from appellant's own testimony, as well as that of Crosby and other non-accomplice witnesses. Accordingly, we overrule appellant's sixth issue.

VI. Ineffective Assistance of Counsel

Lastly, in his seventh issue, appellant contends that he received ineffective assistance of counsel because his counsel failed to request instructions that Lewis and Henry were accomplices and that an accomplice witness's testimony cannot be corroborated by reference to another accomplice witness. The Sixth Amendment to the United States Constitution guarantees the right to reasonably effective assistance of counsel in criminal prosecutions. U.S. Const. amend. VI; *McMann v. Richardson*, 397 U.S. 759, 771 n.14 (1970). In reviewing an ineffective assistance claim, an appellate court "must indulge a strong presumption that counsel's conduct [fell] within the wide range of reasonable professional assistance; that is, [appellant] must overcome the presumption that, under the circumstances, the challenged action might be considered sound trial strategy." *Strickland v. Washington*, 466 U.S. 668, 689 (1984).

Under the two-pronged *Strickland* test, in order to demonstrate ineffective assistance of counsel, a defendant must first show that counsel's performance was deficient, *i.e.*, that his or her assistance fell below an objective standard of reasonableness; second, a defendant must affirmatively prove prejudice by showing a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. *Thompson v. State*, 9 S.W.3d 808, 812 (Tex. Crim. App. 1999).

Here, even assuming that counsel's failure to request certain accomplice witness instructions constituted objectively deficient performance, appellant has failed to demonstrate that a reasonable probability exists that but for such deficiency, the outcome would have been different. As explained under prior issues, the purpose of accomplice witness instructions is not to cast suspicion on the testimony of such witnesses or suggest that less weight should be given to their testimony; the purpose is to remind jurors that they cannot use the accomplices' testimony to convict the defendant unless there also exists some corroborating evidence tending to connect the defendant to the crime. *See*

Cocke, 201 S.W.3d at 747; *Herron*, 86 S.W.3d at 632. As also explained in detail above, the corroborating evidence in this case was particularly strong, establishing that appellant had a motive for wanting Bourgeois killed, had made threats against him, was present at the time of the shooting, aided the shooter in fleeing the scene, gave the shooter a place to stay in the aftermath, and supplied the shooter with money for food.

Given the strength of the corroborating evidence, the record does not affirmatively establish prejudice by showing a reasonable probability that the result of the proceeding would have been different had the charge included the additional accomplice witness instructions. Accordingly, appellant has failed to show that even if his counsel's performance was deficient, a reasonable probability exists that but for such deficiency, the outcome would have been different. *See Thompson*, 9 S.W.3d at 812. We overrule appellant's seventh issue.

We affirm the trial court's judgment.

/s/ Martha Hill Jamison
Justice

Panel consists of Justices Frost, Jamison, and McCally.
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