Affirmed and Memorandum Opinion filed September 8, 2016.

In The

Fourteenth Court of Appeals

NO. 14-15-00567-CR

JULIAN THOMAS VALDEZ, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the 248th District Court
Harris County, Texas
Trial Court Cause No. 1373128

M E M O R A N D U M O P I N I O N

Appellant Julian Valdez was convicted of capital murder and sentenced to imprisonment for life without the possibility of parole. Appellant now appeals his conviction, contending in three issues that the evidence is legally insufficient to support his conviction. We disagree and affirm the trial court's judgment.

BACKGROUND

In the early morning hours of October 20, 2012, appellant left a friend's

house to meet another friend, Anthony Alegria, to go to the store. On the way, appellant and Alegria crossed paths with Armando Sierra-Castro, the complainant, who was walking home from work. Alegria drew a gun as he and appellant approached the complainant, and Alegria demanded the complainant's money. The complainant handed appellant his wallet, which contained only money. Alegria then shot the complainant in the chest. The complainant died at the scene, and law enforcement later found bank and ID cards in the complainant's hand.

Appellant and Alegria fled to the home of a friend, Louis Lopez, where they split the money. Alegria later disposed of the wallet and sold the gun. The purchaser of the gun was a family friend, Larry Zavala, from whom law enforcement later recovered the weapon. A shell casing recovered from the scene of the complainant's death matched the gun. In the immediate aftermath, appellant was upset by the shooting. Lopez later observed that appellant was upset during a conversation about "someone [who] had been shot."

Appellant gave a statement to police admitting he participated in the robbery and understood the robbery "as it was happening." Appellant claimed that he did not know why Alegria shot the complainant.

Appellant was indicted for capital murder. The jury charge included an instruction on the law of parties, and it specifically applied the law of parties in the application paragraph. The jury returned a general verdict finding appellant guilty of capital murder, and the trial court sentenced appellant to life without parole in accordance with the verdict.

ANALYSIS

Appellant raises three issues on appeal, contending that the evidence was insufficient to prove him guilty of capital murder under any of the three theories charged to the jury: (1) appellant was the principal actor, (2) appellant was a direct

party in the murder, and (3) appellant conspired to commit robbery, and the murder was committed in furtherance of that robbery. Because the jury returned a general verdict, it must be upheld if the evidence is sufficient to support a guilty finding under any of the allegations submitted. *Hernandez v. State*, 171 S.W.3d 347, 353 (Tex. App.—Houston [14th Dist.] 2005, pet. ref'd). As explained below, we conclude the evidence was sufficient for a rational jury to find appellant guilty of capital murder under the theory of conspiracy. We therefore need not consider appellant's issues separately.[1] *See* Tex. R. App. P. 47.1; *see also Johnson v. State*, 421 S.W.3d 893, 897 (Tex. App.—Houston [14th Dist.] 2014, no pet.) (affirming capital murder conviction based on conspiracy to commit robbery without considering principal-actor or direct-party theories).

I. Standard of review

When reviewing the sufficiency of the evidence, we view all of the evidence in the light most favorable to the verdict and determine, based on that evidence and any reasonable inferences therefrom, whether a rational jury could have found the elements of the offense beyond a reasonable doubt. *Gear v. State*, 340 S.W.3d 743, 746 (Tex. Crim. App. 2011) (citing *Jackson v. Virginia*, 443 U.S. 307, 318–19 (1979)). In conducting this review, an appellate court considers all evidence in the record, whether it was admissible or inadmissible. *Winfrey v. State*, 393 S.W.3d 763, 767 (Tex. Crim. App. 2013) (citing *Dewberry v. State*, 4 S.W.3d 735, 740 (Tex. Crim. App. 1999)).

We may not substitute our judgment for that of the jury by reevaluating the weight and credibility of the evidence. *Romero v. State*, 406 S.W.3d 695, 697 (Tex.App.-Houston [14th Dist.] 2013), *vacated on other grounds*, 427 S.W.3d 398,

[1] We note the majority of appellant's brief is devoted to contesting the theory of conspiracy, and that the State addresses only the theory of conspiracy in contending that the conviction should be affirmed.

399 (Tex. Crim. App. 2014). We defer to the jury's responsibility to resolve any conflicts in the evidence fairly, weigh the evidence, and draw reasonable inferences. *Id.* The jury alone decides whether to believe eyewitness testimony, and it resolves any conflicts in the evidence. *Id.* Therefore, the testimony of a single eyewitness can be enough to support a conviction. *Id.* (citing *Aguilar v. State*, 468 S.W.2d 75, 77 (Tex. Crim. App. 1971)). In addition, because the jury is the sole judge of the weight and credibility of the evidence, it may find guilt without physical evidence linking the accused to the crime. *Id.* In conducting a sufficiency review, we do not engage in a second evaluation of the weight and credibility of the evidence, but only ensure the jury reached a rational decision. *Young v. State*, 358 S.W.3d 790, 801 (Tex. App.—Houston [14th Dist.] 2012, pet. ref'd).

II. Applicable law

A person commits capital murder if he intentionally causes the death of an individual in the course of committing or attempting to commit robbery. Tex. Penal Code Ann. §§ 19.02(b)(1), 19.03(a)(2) (West 2011). A person commits robbery if, in the course of committing theft and with the intent to obtain or maintain control of the property, he intentionally, knowingly, or recklessly causes bodily injury to another or intentionally or knowingly threatens or places another in fear of imminent bodily injury or death. Tex. Penal Code Ann. § 29.02(a)(1)-(2) (West 2011). Theft is the unlawful appropriation of property with the intent to deprive the owner of the property. Tex. Penal Code Ann. § 31.03 (West 2011). Appropriation of property is unlawful if it is without the owner's effective consent. *Id.* § 31.03(b)(1).

A person may be guilty as a party to capital murder if the defendant committed the offense by his own conduct or by the conduct of another for which

he is criminally responsible. Tex. Penal Code Ann. § 7.01(a) (West 2011); *see Gross v. State*, 380 S.W.3d 181, 186 (Tex. Crim. App. 2012). Under section 7.02(a)(2), 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. Tex. Penal Code Ann. § 7.02(a)(2) (West 2011). Section 7.02(b) of the Penal Code provides:

> If, in the attempt to carry out a conspiracy to commit one felony, another felony is committed by one of the conspirators, all conspirators are guilty of the felony actually committed, though having no intent to commit it, if the offense was committed in furtherance of the unlawful purpose and was one that should have been anticipated as a result of the carrying out of the conspiracy.

Tex. Penal Code Ann. § 7.02(b).

Proof of a culpable mental state invariably depends on circumstantial evidence. *See Heckert v. State*, 612 S.W.2d 549, 550 (Tex. Crim. App. [Panel Op.] 1981); *Martin v. State*, 246 S.W.3d 246, 263 (Tex. App.—Houston [14th Dist.] 2007, no pet.). A culpable mental state can be inferred from the acts, words, and conduct of the accused. *Martin*, 246 S.W.3d at 263.

We may look to events before, during, and after the commission of the offense to determine whether there is sufficient evidence that an individual is a party to an offense. *Gross*, 380 S.W.3d at 186. We may also consider circumstantial evidence. *Id.* "There must be sufficient evidence of an understanding and common design to commit the offense." *Id.* It is unnecessary that each fact point directly to the guilt of the defendant so long as the cumulative effect of the facts are sufficient to support the conviction under the law of parties. *Id.* "However, mere presence of a person at the scene of a crime, or even flight

from the scene, without more, is insufficient to support a conviction as a party to the offense." *Id.* One can encourage the commission of an offense by having an agreement with the perpetrator to commit the offense prior to or contemporaneous with its commission. *See Cordova v. State*, 698 S.W.2d 107, 111 (Tex. Crim. App. 1985). Evidence is sufficient where an accused is present and encourages the commission of the offense by words or other agreement so long as the evidence shows that the parties were acting together. *Cabrera v. State*, 959 S.W.2d 692, 695 (Tex. App.—Fort Worth 1998, pet. ref'd).

III. Sufficient evidence supports appellant's conviction.

A person may be charged with an offense as a principal, a direct party, or a co-conspirator. *See* Tex. Penal Code §§ 7.01 (person is "criminally responsible" if offense is committed by his own conduct or by the "conduct of another for which he is criminally responsible"); 7.02(a)(2) (describing criminal responsibility for direct party); 7.02(b) (describing criminal responsibility for party as co-conspirator). The only issue we need address is whether the evidence supports appellant's conviction as a co-conspirator. As explained below, we conclude the evidence is sufficient to support appellant's conviction as a co-conspirator under section 7.02(b) because the evidence supports a finding that appellant should have anticipated the possibility of a murder resulting from the course of committing robbery.

Section 7.02(b) is quoted above, and it frames our sufficiency inquiry in this case as follows: appellant is guilty of capital murder if (1) he was part of a conspiracy to rob the complainant; (2) one of the conspirators murdered the complainant; (3) the murder was in furtherance of the conspiracy; and (4) the murder should have been anticipated as a result of carrying out the conspiracy. *Hooper v. State*, 214 S.W.3d 9, 14 n. 4 (Tex. Crim. App. 2007). Appellant

challenges the first and fourth elements, but we conclude that sufficient evidence of those elements supports the jury's guilty verdict.

A. Evidence of a conspiracy

Appellant contends there is no evidence he conspired with Alegria to rob the complainant. Appellant addresses the statement he gave law enforcement by claiming he was asked leading questions and responded unintelligibly, equivocally, and ambiguously. Appellant argues that because his statement is the only evidence provided to support a conspiracy, the jury could not have concluded he conspired with Alegria to commit a robbery without relying on speculation.

We conclude that appellant's statement contains factual assertions sufficient to allow a rational jury to conclude he was guilty beyond a reasonable doubt. A defendant's own statement may be sufficient to establish guilt. *See Ervin v. State*, 333 S.W.3d 187, 201–02 (Tex. App.—Houston [1st Dist.] 2010, pet. ref'd) (holding a rational jury could have found appellant guilty of murder as a conspirator based on her statements). Although appellant's statement is inconsistent and unclear in places, it is for the trier of fact to resolve inconsistencies, determine credibility, and give weight to the evidence. *See Romero*, 406 S.W.3d at 697. When the record supports conflicting inferences, we presume the finder of fact resolved the conflicts in favor of the verdict and must defer to that determination. *Clayton v. State*, 235 S.W.3d 772, 778 (Tex. Crim. App. 2007). Accordingly, we must assume the jury resolved any inconsistencies in appellant's statement by giving weight to the parts of the statement that support the conviction and disregarding the parts of the statement that do not. *See id.*

According to appellant's statement, appellant met with Alegria late at night. When they came across the complainant, Alegria pulled a gun and told the complainant to give up his money. The complainant handed his wallet to

appellant, who had approached along with Alegria. Appellant made no attempt to stop the robbery, render aid to the complainant, or report the crime. Appellant participated in the robbery, understood it "as it was happening," fled the scene with Alegria, and split the money with him.

Further, appellant's statement was corroborated by physical evidence and witness testimony. Appellant said he took the wallet but did not get any credit cards; the complainant was found holding his bank and ID cards but without a wallet. Appellant said that Alegria had sold the gun; Zevala testified that he had bought a gun from Alegria's step-father, and shell casings from that gun matched a shell casing found at the scene. Lopez testified that after the shooting, he participated in a conversation with Alegria and appellant where Alegria discussed "someone who had been shot," and appellant appeared to be upset during the conversation.

In the light most favorable to the verdict, the evidence shows that appellant coordinated with Alegria just before, during, and after the robbery. The cumulative weight of the evidence would allow a rational factfinder to conclude appellant formed a prior or contemporaneous agreement with Alegria to commit this robbery, in which appellant participated. Accordingly, we hold there was sufficient evidence of appellant's involvement in a conspiracy to rob the complainant.

B. Evidence that the murder should have been anticipated

Appellant also contends there was insufficient evidence showing he should have anticipated the murder of the complainant as a result of carrying out the conspiracy to commit robbery. Appellant asserts that his statement establishes he knew about Alegria's gun only "right before" they approached the complainant, and argues the State failed to show he knew Alegria had violent propensities.

Further, appellant argues he was merely in the wrong place at the wrong time given the evidence that he himself was not armed during the encounter, that he did not converse with the complainant, and that he "flipped out" after the shooting.

"Knowledge of a co-conspirator's violent propensity or intent to commit aggravated assault is not an element of the offense under either theory of party liability, so the lack of evidence of such knowledge is not dispositive of sufficiency." *Hooper*, 214 S.W.3d at 14. Accordingly, appellant's purported lack of knowledge of Alegria's violent nature does not render the evidence insufficient. *See Johnson*, 421 S.W.3d at 898. Similarly, the evidence is not rendered insufficient because appellant was unarmed, did not speak to the complainant during the robbery, and was emotionally upset afterwards, because these are also not elements of the offense. At best, they are pieces of evidence that a rational jury may have weighed while still finding appellant guilty.

As to appellant's awareness of Alegria's gun, appellant's statement is conflicting as to whether Alegria drew the weapon "as he was walking up" from a distance of more than eight feet, or whether he drew the weapon after they had closed the distance with the complainant. As stated above, we must defer to the presumption that the finder of fact resolved the conflicts in favor of the prosecution. *Clayton*, 235 S.W.3d 778. Here, the jury resolved the inconsistencies in appellant's statement in favor of the guilty verdict.

"Evidence that a defendant knew his co-conspirators might use guns in the course of the robbery can be sufficient to demonstrate that the defendant should have anticipated the possibility of murder occurring during the course of the robbery." *Love v. State*, 199 S.W.3d 447, 453 (Tex. App.—Houston [1st Dist.] 2006, pet ref'd). Gaining knowledge that a co-conspirator has a gun just before the commission of an offense can be sufficient to put a conspirator on notice of the

possibility of murder. *See Johnson*, 421 S.W.3d at 899 (holding evidence sufficient that appellant should have anticipated the possibility of murder during a robbery knowing his co-conspirator had a gun, at the latest, after the conspirators had begun accosting the complainant but before stealing his money). Prior knowledge that the co-conspirator owned or had acquired a weapon is not necessary where the evidence shows the defendant knew a co-conspirator had brought a weapon to commit the offense. *See Nava v. State*, 379 S.W.3d 396, 406–08 (Tex. App.—Houston [14th Dist.] 2012), *aff'd*, 415 S.W.3d 289, 292 (Tex. Crim. App. 2013) (holding evidence that showed appellant knew a co-conspirator had brought a weapon to the location where they committed a felony was sufficient to show appellant should have anticipated the possibility of murder.)

Appellant stated at one point that he saw Alegria draw the gun when the complainant was more than eight feet away. Between Alegria drawing the gun and the fatal gunshot, the two walked up to the complainant, exchanged words with him, demanded his money, and obtained his wallet. Appellant did not attempt to dissuade Alegria from using the weapon or robbing the complainant. The presence of the weapon did not prevent appellant from participating in the robbery and subsequently splitting the money. We conclude the cumulative effect of the evidence of events before, during, and after the robbery would permit a rational trier of fact to conclude beyond a reasonable doubt that appellant should reasonably have anticipated the possibility of murder occurring in the course of the robbery.

Because there is evidence that appellant conspired with Alegria to rob the complainant and appellant should have anticipated the murder of the complainant as a result of carrying out the robbery, a reasonable juror could have found appellant guilty of the offense as a conspirator. Accordingly, we overrule

appellant's third issue.

CONCLUSION

Having addressed and rejected the only issue necessary to resolve this appeal, we affirm the trial court's judgment.[2]

/s/ J. Brett Busby
Justice

Panel consists of Justices Busby, Donovan, and Wise.
Do Not Publish — TEX. R. APP. P. 47.2(b).

[2] *See* Tex. R. App. P. 47.1.