Affirm and Memorandum Opinion filed December 21, 2017.

In The

Fourteenth Court of Appeals

NO. 14-15-00836-CR

CHRISTOPHER WILLIAMS, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the 176th District Court
Harris County, Texas
Trial Court Cause No. 1410165

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

A jury convicted appellant Christopher Williams of capital murder and the trial court assessed automatic punishment of life imprisonment without parole. *See* Tex. Penal Code Ann. § 12.31(a)(2) (Vernon Supp. 2017). We affirm.

BACKGROUND

Houston police responded to reports of a shooting in north Houston shortly after midnight on June 13, 2011. At the scene, police discovered the body of Nathan

Davis, who had been fatally shot once in the head.

The responding officer recognized Davis as a prostitute the officer frequently had observed in the area wearing a wig and a dress. Davis was wearing a wig and a dress at the time he was killed, and a witness recalled seeing Davis hours before his murder carrying a brown purse. Police did not find a purse, wallet, or money at the scene.

Police found a sticky white substance by Davis's body that appeared to be semen. Police also recovered a fired .380 caliber shell casing.

Two witnesses recalled hearing a sound similar to a gunshot and seeing an African-American man matching appellant's general description leaving the scene of the crime. Both witnesses testified that the man was holding "something white" in his hands. One witness recalled that the man also was holding a gun.

The police were unable to locate any suspects and closed the investigation into Davis's murder pending new investigative leads.

In September 2013, DNA evidence recovered from the crime scene matched samples from appellant. Subsequent testing indicated that the semen recovered from the ground at the crime scene and DNA recovered from Davis's mouth matched appellant's DNA profile to a high degree of probability.

Caleb Mouton, appellant's longtime friend, contacted police regarding a conversation in which appellant admitted to murdering Davis. Mouton, a convicted felon, stated that he was facing aggravated robbery charges when appellant made statements to him about Davis's murder. Mouton informed police of appellant's statements hoping to secure "[a] better deal on [his] aggravated robberies" in exchange for testimony. At the time of appellant's trial, Mouton had not entered into a deal with the State.

Mouton testified that appellant said he had been driving around with a friend the night of Davis's murder, saw Davis working as a prostitute, and decided to "approach [Davis] to try to rob him." Mouton testified that appellant said he asked Davis for sex, followed Davis behind a dumpster, and pulled a gun on him. Mouton testified that appellant said he and Davis struggled for the gun and that appellant shot Davis in the head. According to Mouton, appellant said he took money from Davis's "bra or shirt" after the shooting.

Police charged appellant with murder after receiving Mouton's tip. Mouton testified that he was with appellant when appellant learned of the indictment. Appellant "broke down in tears" and told Mouton that there was more to the story than he previously had relayed.

According to Mouton, after the indictment appellant again discussed with him the sequence of events that occurred the night of Davis's murder. Appellant said he was "riding around looking for money," saw Davis working as a prostitute, and approached Davis. Mouton testified that appellant said Davis seemed "suspicious of [appellant]" and "instead of just robbing him right there he was going to — [appellant] asked [Davis] for, you know, uh, sex or whatever." Mouton testified that appellant said he followed Davis behind a dumpster and received oral sex from Davis. Mouton testified that appellant said he shot Davis when "he noticed that [Davis] was a guy" and took money from Davis's body after the shooting. According to Mouton, appellant said that police "found [appellant's] semen in [Davis's] mouth," which provided "the DNA that tracked [appellant] back, uh, to the case."

Recounting appellant's statements to the police, Mouton included several details about Davis's murder that had not been included in police statements to the public, including the caliber of weapon used; that appellant's semen was in Davis's

mouth; that appellant said he had seen a man and a woman nearby when he fled the scene; that Davis had been shot once in the head; and that appellant took money from the bra Davis was wearing when he was murdered.

Police arrested appellant and charged him with capital murder for the murder and robbery of Davis. Appellant pleaded not guilty.

Appellant's trial was held in September 2015. Appellant requested a jury instruction on the lesser-included offense of murder; the trial court denied appellant's request.

A jury found appellant guilty of capital murder. Because the State did not seek the death penalty, the trial court assessed automatic punishment of life imprisonment without parole. *See* Tex. Penal Code Ann. § 12.31(a)(2).

ANALYSIS

Appellant challenges his conviction for capital murder. Appellant concedes that the evidence is sufficient to support a finding that he is guilty of murder, but contends that there is no evidence other than his own confession showing that the murder was committed in the course of a robbery. Appellant raises four issues on appeal:

1. The evidence, excluding appellant's extrajudicial confessions to Mouton, is insufficient to support appellant's conviction with regard to the underlying offense of robbery.
2. The trial court erred by failing to instruct the jury *sua sponte* on the corpus delicti rule.
3. The trial court erred by refusing appellant's request for a jury instruction on the lesser included offense of murder.
4. The trial court's alleged charge errors warrant a reversal of appellant's conviction.

We address each of these contentions in turn.

I. Sufficiency of the Evidence

Appellant asserts that the evidence is insufficient to establish that the murder was committed during or in furtherance of a robbery, and therefore disputes that the murder was a capital offense.

A person commits capital murder when he commits murder as defined under Texas Penal Code section 19.02(b)(1) and intentionally commits the murder in the course of committing or attempting to commit robbery. Tex. Penal Code Ann. § 19.03(a)(2) (Vernon Supp. 2017). A person commits murder under section 19.02(b)(1) when he intentionally or knowingly causes the death of an individual. Tex. Penal Code Ann. § 19.02(b)(1) (Vernon 2011). A person commits robbery when he, in the course of committing theft as defined in Chapter 31 and with intent to obtain or maintain control of the property, (1) intentionally, knowingly, or recklessly causes bodily injury to another; or (2) intentionally or knowingly threatens or places another in fear of imminent bodily injury or death. Tex. Penal Code Ann. § 29.02(a) (Vernon 2011). A person commits theft as defined in Chapter 31 when he unlawfully appropriates property with the intent to deprive the owner of the property. Tex. Penal Code Ann. § 31.03(a) (Vernon Supp. 2017).

Because this case involves an extrajudicial confession, the corpus delicti rule of evidentiary sufficiency affects our analysis. *Miller v. State*, 457 S.W.3d 919, 924 (Tex. Crim. App. 2015). "The rule states that, when the burden of proof is beyond a reasonable doubt, a defendant's extrajudicial confession does not constitute legally sufficient evidence of guilt absent independent evidence of the corpus delicti." *Id.*

"The corpus delicti of a crime — *any* crime — simply consists of the fact that the crime in question has been committed by someone." *Fisher v. State*, 851 S.W.2d 298, 303 (Tex. Crim. App. 1993) (en banc) (emphasis in original). The corpus delicti rule is satisfied if evidence independent of the extrajudicial confession makes the

charged crime "more probable than it would be without the evidence." *Bradford v. State*, 515 S.W.3d 433, 437 (Tex. App.—Houston [14th Dist.] 2017, pet. ref'd) (internal quotation omitted). The evidence need not show that the defendant committed the charged crime, but only that the charged crime occurred. *Id*. For this inquiry we consider all the record evidence — excluding the extrajudicial confession — in the light most favorable to the jury's verdict to determine whether the evidence tended to establish the commission of the charged offense. *Parrish v. State*, 485 S.W.3d 86, 90 (Tex. App.—Houston [14th Dist.] 2015, pet. ref'd). Circumstantial evidence may be used to prove the corpus delicti of an offense. *Id*.

In a capital murder case, the corpus delicti requirement extends to both the murder and the underlying aggravating offense. *Rocha v. State*, 16 S.W.3d 1, 4 (Tex. Crim. App. 2000).

In a capital murder case involving the underlying offense of robbery, evidence showing that the victim possessed certain property before his death but was found without that property after his death satisfies the corpus delicti rule. *See Chiles v. State*, 988 S.W.2d 411, 414 (Tex. App.—Houston [1st Dist.] 1999, pet. ref'd) (corpus delicti rule satisfied where "[t]he victim's wife testified that the victim always wore his gold necklace and pager" and these items were not found with the victim's body); *see also Straughter v. State*, No. 05-10-00163-CR, 2011 WL 2028234, at *5 (Tex. App.—Dallas May 25, 2011, no pet.) (mem. op., not designated for publication) ("evidence that [the victim] always carried his wallet with him and that it was missing when his body was found" satisfied corpus delicti rule); *Simmons v. State*, No. 07-08-0229-CR, 2009 WL 3817582, at *4 (Tex. App.—Amarillo Nov. 16, 2009, pet. ref'd) (mem. op., not designated for publication) (evidence showing that the victim "had ten dollars with him when he walked away . . . and did not have it when his body was found" satisfied corpus delicti rule); *Schneider v. State*, No.

01-04-00868-CR, 2005 WL 2995824, at *3 (Tex. App.—Houston [1st Dist.] Nov. 3, 2005, pet. ref'd) (mem. op., not designated for publication) (corpus delicti rule satisfied where evidence showed that victim kept his cocaine in a small black bag and victim was found without black bag after murder).

The record in this case includes evidence independent of appellant's extrajudicial confessions that makes it more probable than not that appellant committed a robbery.

Witnesses testified that Davis regularly worked as a prostitute and appeared to be working as a prostitute the night he was murdered. Because he regularly engaged in prostitution, the State argued at trial that Davis likely possessed cash at the time of his murder. A witness also recalled seeing Davis the day of his murder carrying a small brown purse. Neither cash nor a purse was found with Davis's body.

Two witnesses testified that they saw a man leaving the scene of Davis's murder carrying "something white" in his hands. The State argued at trial that this "something white" was property appellant stole from Davis.

Considering this evidence in the light most favorable to the jury's verdict, it is more probable than not that appellant committed a robbery. Evidence suggested that Davis possessed money, a purse, or both before he was murdered. Police did not find a purse or money with Davis's body, and witnesses recalled seeing a man leaving the scene carrying "something white" in his hands. This evidence is sufficient to satisfy the corpus delicti rule in regard to the underlying offense of robbery. *See Chiles*, 988 S.W.2d at 414; *see also Straughter*, 2011 WL 2028234, at *5; *Simmons*, 2009 WL 3817582, at *4; *Schneider*, 2005 WL 2995824, at *3.

II. Instruction on the Corpus Delicti Rule

Appellant asserts that the trial court erred by failing to charge the jury *sua sponte* on the corpus delicti rule.

"[A] trial judge need not instruct the jury on corroboration when the corpus delicti is established by other evidence." *Baldree v. State*, 784 S.W.2d 676, 686-87 (Tex. Crim. App. 1989) (en banc); *see also Aguilera v. State*, 425 S.W.3d 448, 458 (Tex. App.—Houston [1st Dist.] 2011, pet. ref'd).

Here, as discussed above, evidence independent of appellant's extrajudicial confessions is sufficient to establish the corpus delicti of Davis's robbery. Therefore, the trial court was not required to instruct the jury regarding the corpus delicti rule. *See Baldree*, 784 S.W.2d at 686-87; *Aguilera*, 425 S.W.3d at 458.

III. Instruction on the Lesser-Included Offense of Murder

Appellant contends that the trial court erred by refusing his request for a jury instruction on the lesser-included offense of murder.

A two-part analysis determines whether a defendant was entitled to a lesser-included offense instruction. *Goad v. State*, 354 S.W.3d 443, 446 (Tex. Crim. App. 2011).

The first part of the analysis examines whether the requested instruction pertains to an offense that is a lesser-included offense of the charged crime. *Bullock v. State*, 509 S.W.3d 921, 925 (Tex. Crim. App. 2016). Here, murder is a lesser-included offense of capital murder. *Threadgill v. State*, 146 S.W.3d 654, 665 (Tex. Crim. App. 2004) (en banc).

The second part of the analysis examines whether there is evidence in the record that supports giving the lesser-included offense instruction to the jury. *Bullock*, 509 S.W.3d at 924-25. For this inquiry, we "examin[e] all the evidence

admitted at trial, not just the evidence presented by the defendant." *Id*. at 925.

"[A] defendant is entitled to an instruction on a lesser-included offense when there is some evidence in the record that would permit a jury to rationally find that, if the defendant is guilty, he is guilty only of the lesser-included offense." *Id*. at 925. The evidence is sufficient if it shows "that the lesser-included offense is a valid, rational alternative to the charged offense." *Id*. "Anything more than a scintilla of evidence" entitles the defendant to a lesser charge, but there "must be some evidence directly germane to the lesser-included offense for the finder of fact to consider before an instruction on a lesser-included offense is warranted." *Id*.

When a defendant requests a charge on the lesser-included offense of murder based upon a dispute about the element that elevates the offense to capital murder, the defendant is entitled to an instruction on murder if (1) there is "some evidence which negates the aggravating element," or (2) "the evidence of such aggravating element is so weak that a rational jury might interpret it in such a way as to give it no probative value." *Wolfe v. State*, 917 S.W.2d 270, 278 (Tex. Crim. App. 1996).

Appellant asserts that Mouton's testimony regarding his second conversation with appellant warrants a jury instruction on the lesser-included offense of murder.

Appellant asserts that "his second statement to Mouton . . . indicated that he received oral sex from the prostitute, not realizing his true gender until after the sex act had been completed." According to appellant, this evidence shows that appellant shot Davis upon discovering that he was a man — rather than in the course of robbing him — and thus entitles appellant to an instruction on the lesser-included offense of murder.

Mouton's testimony does not support this argument. Discussing his second conversation with appellant, Mouton testified that appellant said he was "riding

around looking for money," saw Davis working as a prostitute, and approached Davis. According to Mouton, appellant said he decided against robbing Davis immediately when Davis appeared "suspicious" of appellant; instead, he followed Davis behind a dumpster and received oral sex. Mouton testified that appellant said he shot Davis when "he noticed that [Davis] was a guy," and that appellant recalled taking money from Davis's body after the shooting.

This testimony is consistent with the conclusion that appellant shot and killed Davis in the course of robbing or attempting to rob him. Mouton's testimony about his second conversation with appellant — specifically, that appellant said he was "riding around looking for money" — suggests that appellant had the intent to rob even before he selected Davis as his victim. Similarly, delaying the robbery to receive oral sex does not show that appellant lacked altogether the intent to rob Davis. Instead, Mouton's testimony suggests that appellant orchestrated this sequence of events to allay Davis's suspicions and conduct the robbery in a more secluded location behind a dumpster. Mouton's testimony, in its entirety, does not "negate[] the aggravating element" of robbery and does not entitle appellant to an instruction on the lesser-included offense of murder. *See Wolfe*, 917 S.W.2d at 278.

The remaining evidence neither negates the aggravating element of robbery nor lacks probative value. Mouton testified that, in two conversations, appellant said he was riding around the night of Davis's murder looking for an individual to rob. Mouton testified that appellant said he shot Davis and took money from him. Davis regularly worked as a prostitute and a witness recalled seeing Davis the day of his murder with a purse; the police did not find a purse or money with Davis's body. Two witnesses testified that they saw an African-American man matching appellant's general description leaving the scene of Davis's murder carrying "something white." On this record, there is no evidence that would have permitted

a rational jury to acquit appellant of capital murder while convicting him of murder.

Appellant also suggests that the State's failure to satisfy the corpus delicti rule with regard to the underlying offense of robbery entitles him to an instruction on the lesser-included offense of murder. Appellant does not cite any cases that incorporate the corpus delicti rule in this manner. Instead, case law states that we "examin[e] all the evidence admitted at trial" to determine whether the defendant was entitled to a lesser-included offense instruction. *Bullock*, 509 S.W.3d at 925. Further, as discussed above, the evidence admitted at trial satisfies the corpus delicti rule with regard to the underlying offense of robbery. Appellant's corpus delicti argument does not warrant an instruction on the lesser-included offense of murder.

Because we overrule appellant's first three issues, we do not reach his fourth issue addressing remedies for the alleged charge errors.

CONCLUSION

Having overruled all of appellant's issues on appeal, we affirm the trial court's judgment.

/s/ William J. Boyce
Justice

Panel consists of Justices Boyce, Jamison, and Brown.
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