Affirmed and Memorandum Opinion filed January 12, 2017.

In The

Fourteenth Court of Appeals

NO. 14-15-00966-CR
NO. 14-15-00967-CR

KAHLID YUSUF WORRELL, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the 338th District Court
Harris County, Texas
Trial Court Cause Nos. 1300763 & 1453435

MEMORANDUM OPINION

This is an appeal from two separate judgments. The first is a judgment adjudicating guilt, which arises out of an offense committed in 2011. The second is a judgment of conviction by jury, which arises out of an offense committed in 2015, when appellant was on community supervision. Several issues are raised between the two cause numbers, but we only address the merits of one issue in

which appellant challenges the admission of extraneous-offense evidence. Finding no reversible error, we overrule that issue and affirm the trial court's judgments.

NO. 14-15-00966-CR

Appellant pleaded guilty in 2011 to a charge of burglary of a habitation. The trial court deferred an adjudication of guilt and placed appellant on community supervision for a period of six years. In 2015, the State moved to adjudicate guilt, alleging that appellant had violated the terms of his community supervision by committing the murder that is the subject of the other cause number in this appeal. The trial court carried the motion with the murder trial and ruled on it after the jury returned a verdict in that other case.

Appellant's trial counsel filed notices of appeal in both the burglary case and the murder case. Appellant was appointed different counsel on appeal, and counsel here has filed a single brief addressing both cases together. In the combined brief, counsel concludes that the appeal of the burglary case (and only that case) is wholly frivolous and without merit. The brief meets the requirements of *Anders v. California*, 386 U.S. 738 (1967), by presenting a professional evaluation of the record and demonstrating why there are no arguable grounds to be advanced. *See High v. State*, 573 S.W.2d 807 (Tex. Crim. App. 1978).

A copy of counsel's brief was delivered to appellant, and he was advised of the right to examine the appellate record and file a pro se response. Appellant requested and was provided a copy of the record. Appellant also filed a pro se response to counsel's *Anders* brief.

We have carefully reviewed the record, counsel's brief, and appellant's pro se response and agree that the appeal in the burglary case is wholly frivolous and without merit. Further, we find no reversible error in the record. We need not

address the merits of each claim raised in an *Anders* brief or a pro se response when we have determined that there are no arguable grounds for review. *See Bledsoe v. State*, 178 S.W.3d 824, 827–28 (Tex. Crim. App. 2005).

Accordingly, we affirm the trial court's judgment in the burglary case.

NO. 14-15-00967-CR

In the murder case, appellant's appointed counsel asserts three separate points of error, but they all complain of the same issue, which is the admission of extraneous-offense evidence. The State did not file a brief responding to the merits of this complaint.

Background. The complainant, a twelve-year-old boy, was fatally shot three times in his home. The exact reason for the shooting was never fully explained at trial. The evidence suggested that the complainant was merely in the wrong place, at the wrong time, caught in a terrible moment between his adult brother, Dashawn, and appellant, who was Dashawn's former friend.

Dashawn testified that he had known appellant for about a year. On the day of the shooting, Dashawn invited appellant over to his house to smoke marijuana. Dashawn also hoped that appellant would drive him to a barbershop to get his hair cut. Appellant arrived in the afternoon. He came into the living room and engaged in small talk with Dashawn. The complainant was also in the living room, watching cartoons. After a few minutes, Dashawn left for the bathroom to brush his teeth. He left the door to the bathroom open and carried on his conversation with appellant. Dashawn did not detect any sense of animosity or disagreement coming from appellant.

Without warning, appellant walked over to the area just outside the bathroom and shot Dashawn in the face. Dashawn managed to close and lock the

bathroom door. Appellant then fired into the bathroom through the door. Dashawn was struck five more times. He escaped through the bathroom window and ran to a neighbor's house, where he sought help. Because he could not speak (a bullet had lodged in his throat), Dashawn used a neighbor's phone to write a message saying that he had just been shot by appellant. Dashawn also wrote that his siblings were still inside the home.

When the police arrived, appellant had already fled the scene. The complainant was pronounced dead on arrival. He had been shot in the head, in the living room where he had been watching television. Another sibling had been shot in the neck, but the bullet just grazed the skin.

The police quickly identified appellant as a likely suspect. Appellant had dialed Dashawn's house phone shortly before the shooting, and his number appeared on the caller ID. The complainant's twin had also identified appellant in a photo array. The twin was in another room when the shooting occurred, meaning that he did not witness the shooting, but the twin said that he had seen appellant in the home in the moments immediately preceding the shooting. The twin was also able to give a description of what appellant had been wearing.

Within a week of the shooting, the police found appellant driving around in the neighborhood. They initiated a traffic stop and searched his vehicle. In the trunk, they found the murder weapon, a box of ammunition, and a laptop. The laptop is the focus of appellant's extraneous-offense complaint.

In a hearing outside the presence of the jury, the State indicated that it was planning to introduce evidence that appellant had stolen the laptop. The State explained that this extraneous theft was relevant, in part, because the laptop led to the discovery of other important evidence. In its proffer, the State said that the laptop was registered to a Vietnamese man, who reported that the laptop was taken

from the trunk of his car when he was shopping at Walmart. The theft occurred on the same day as the shooting, and the Walmart was less than two miles away from Dashawn's house. Based on that information, investigators sought the surveillance footage from inside the Walmart. From that footage and additional investigations, the State learned that appellant had paid cash for a box of ammunition, that the ammunition matched the kind that was both used in the shooting and found in appellant's car, and that the purchase occurred less than one hour before the shooting. The surveillance footage also corroborated the twin's description of appellant's clothing.

The State argued that the extraneous theft was admissible because of the role it played in the investigation. The State also argued that the extraneous theft was probative of appellant's motive and identity. Defense counsel objected. He argued that the evidence of appellant's purchase at Walmart could be introduced without mentioning the extraneous theft. The trial court overruled the objection.

Analysis. We need not determine whether the trial court abused its discretion by admitting the evidence of the extraneous offense because any error in the admission of that evidence would be subject to a harm analysis for nonconstitutional error, and under that standard, the error would be harmless.

Nonconstitutional error must be disregarded unless it affects a defendant's substantial rights. *See* Tex. R. App. P. 44.2(b). An error affects a defendant's substantial rights when the error has a substantial and injurious effect or influence on the jury's verdict. *See King v. State*, 953 S.W.2d 266, 271 (Tex. Crim. App. 1997). If the error had no or only a slight influence on the verdict, the error is harmless. *See Johnson v. State*, 967 S.W.2d 410, 417 (Tex. Crim. App. 1998).

When assessing harm, we consider "everything in the record, including any testimony or physical evidence admitted for the jury's consideration, the nature of

the evidence supporting the verdict, the character of the alleged error and how it might be considered in connection with other evidence in the case." *See Morales v. State*, 32 S.W.3d 862, 867 (Tex. Crim. App. 2000). We also consider the jury instructions given by the trial court, the State's theory and any defensive theories, closing arguments, and even voir dire, if material to the defendant's claim.

The Evidence as a Whole. The State produced overwhelming evidence of appellant's guilt. When the complainant was killed, the only other people in his home were his siblings and appellant. Dashawn testified that appellant was the only shooter, and the physical evidence supported that finding.

A total of eleven cartridge casings were recovered from the home. Ten of the casings were aluminum, and the eleventh was brass. A firearms expert testified that all eleven casings were fired from the same weapon—the gun found in appellant's vehicle. The aluminum casings matched the brand of ammunition that appellant purchased from Walmart. Moreover, the box of ammunition found in appellant's vehicle was missing exactly ten bullets. The State suggested that the bullet with the brass casing may have already been in the chamber when appellant loaded the magazine with the bullets with the aluminum casings.

The jury also heard testimony from one of appellant's coworkers that appellant had confessed to the murder. The coworker testified that appellant called him after the shooting, during a time when there was widespread media coverage of the killing. Appellant wanted the coworker to pick up appellant's paycheck, but the coworker declined. According to the coworker, appellant mentioned during their conversation that he was trying to hurt Dashawn and that the killing of the complainant was accidental.

The evidence of guilt in this case was strong and compelling. Appellant's role in an extraneous theft was not likely to move the jury from a state of non-persuasion to a state of persuasion.

The Jury Charge. We first note that appellant was charged with murder, not theft, and because those two offenses are dissimilar, there is a reduced chance that the jury would have convicted appellant based on a pattern of past conduct. We also note that the jury received a limiting instruction in the charge, which further reduced the chance that the conviction was based on an impermissible inference of character conformity. *See Jones v. State*, 944 S.W.2d 642, 654 (Tex. Crim. App. 1996).

Closing Arguments. The State did not mention the extraneous theft during its closing argument. Neither did defense counsel, which means the jury probably gave little weight to it. *See Lester v. State*, 889 S.W.2d 592, 594 (Tex. App.—Houston [14th Dist.] 1994, pet. ref'd) ("Because the prosecutor did not mention the extraneous offense in her closing argument, the jurors probably gave little weight to it.").

However, defense counsel emphasized a different extraneous offense: the aggravated assault against Dashawn. Even though appellant did not testify, counsel accepted as true that appellant went to Walmart, that he purchased a box of ammunition, and that he then went into Dashawn's house with a loaded gun. Counsel said that all of those facts were "uncontroverted." What happened inside the house is where counsel's story differed from the State's. Counsel said that there was a two-person gunfight between Dashawn and appellant. Counsel's strongest piece of evidence in favor of this theory was the brass casing, which was found inside the bathroom. Counsel suggested that Dashawn must have fired the bullet

from this casing (allocating all of the aluminum casings to appellant), meaning that Dashawn could have been responsible for the death of the complainant.

Counsel then argued that the State had overreached when it filed its criminal charges against appellant:

> Is he guilty of something? Damn straight. Yes, he is. Should he pay for what he did? Yes. But he should . . . pay for what he did, not for what the State has the power to charge him with. Because you know that there'[re] other offenses he can be charged with. Aggravated assault.

But appellant was not charged with the aggravated assault of Dashawn; he was charged instead with the murder of the complainant. By emphasizing this extraneous assault, counsel drew attention away from the extraneous theft and any unfair prejudice it might have created.

Based on the entire record, we cannot say that the evidence of the extraneous theft had a substantial and injurious effect on the jury's verdict. At most, the evidence only slightly influenced the jury. We conclude that any error in the admission of this evidence was harmless. *See Johnson*, 967 S.W.2d at 417.

CONCLUSION

The trial court's judgments are affirmed.

/s/ Tracy Christopher
Justice

Panel consists of Justices Christopher, Jamison, and Donovan.
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