Affirmed and Memorandum Opinion filed March 30, 2017.

In The

Fourteenth Court of Appeals

NO. 14-15-00972-CR

ARTHUR R. HOLLOWAY, JR., Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the 177th District Court
Harris County, Texas
Trial Court Cause No. 1392086

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

A jury convicted appellant Arthur R. Holloway, Jr., of capital murder. The trial court sentenced appellant to confinement for life in the Institutional Division of the Texas Department of Criminal Justice. In this appeal, appellant claims the trial court committed reversible error in admitting into evidence photographs of the crime scene and there was insufficient corroborating evidence to support his conviction. We affirm.

INSUFFICIENT EVIDENCE

Because it would afford the greatest relief if sustained, we first address appellant's second point of error claiming the evidence is insufficient to sustain his conviction for the capital murder of Le Duy Nguyen ("Nguyen"). Appellant does not challenge any of the elements of capital murder, rather he contends the evidence fails to support the jury's finding that he was the person who committed the offense. Appellant asserts the only evidence that implicated him came from two witnesses — Leslie Bullock and Khaundrica Williams.

Because Williams was indicted as a co-defendant, she is an accomplice as a matter of law. *See Smith v. State*, 332 S.W.3d 425, 439 (Tex. Crim. App. 2011); *Freeman v. State*, 352 S.W.3d 77, 82 (Tex. App.—Houston [14th Dist.] 2011, no pet.). Thus the sufficiency of the evidence is measured under the accomplice-witness rule, which provides that a conviction may not be obtained on the uncorroborated testimony of an accomplice to the crime. *Malone v. State*, 253 S.W.3d 253, 257 (Tex. Crim. App. 2008); Tex. Code Crim. Proc. art. 38.14 (West 2013).[1] When evaluating the sufficiency of corroboration evidence under the accomplice-witness rule, we eliminate the accomplice's testimony from consideration and examine the remaining evidence in the record to determine if there is any evidence that tends to connect appellant to the offense. *Malone*, 253 S.W.3d at 257. It is not necessary that the corroborating evidence, by itself, prove appellant's guilt beyond a reasonable doubt. *Id.* Rather, the evidence must simply link appellant in some way to the commission of the crime and show that "rational jurors could conclude that this evidence sufficiently *tended* to connect appellant to the offense." *Id.* (quoting *Hernandez v. State*, 939 S.W.2d 173, 179 (Tex. Crim. App. 1997) (emphasis in the original). Corroborating evidence is reliable if there is

[1] The record reflects the jury was instructed on the accomplice-witness rule.

no rational and articulable basis for either disregarding it or finding that it fails to connect the defendant to the offense. *Herron v. State*, 86 S.W.3d 621, 633 (Tex. Crim. App. 2002). Appellant argues that after excluding the evidence elicited from Williams, the remaining evidence fails to tend to connect him with the murder of Nguyen.

The Non-accomplice Evidence

On April 24, 2013, an armed robbery occurred at a Phillips 66 gas station in southwest Houston. There were three robbers, one of whom shot the cashier with a high-powered rifle, an AK-47 or an SKS. The cashier survived and told police that he recognized one of the suspects, later identified as Korey Magee, as a regular customer.

Several days later, the getaway car was identified as belonging to Nguyen. Before the robbery, Nguyen had reported the car stolen and claimed he had recovered it himself. Nguyen did not provide any information to police about the robbery and was ruled out as a suspect because he was Asian and all of the robbers had been described as African-American. The police learned Nguyen was a crack addict and loaned his car to dealers in exchange for drugs.

The investigation of the neighborhood around the gas station led police to identify Magee as a suspect in the robbery, and the cashier identified Magee from a photo lineup. Police arranged for surveillance at the home of Magee's girlfriend, Crystal Dixon, to apprehend him. On May 10, Nguyen arrived and conducted a hand-to-hand transaction with someone who looked like Magee. Police stopped Nguyen when he drove away and searched his car for drugs but none were found. Subsequently, police entered Crystal's home and arrested Magee.

While in jail, Magee made several phone calls. Officer Daniel Costin, who listened to tapes of the phone calls, testified that it was his opinion the other voice on those calls was Lynell Jordan, an associate of Magee's. These calls revealed Magee believed Nguyen had brought the police to Crystal's house to arrest him and that Magee thought he had been "snitched on" by Nguyen. In one call, Jordan told Magee that "Art," a name Magee used for appellant, was coming to town. In another call, Magee asked Jordan to ensure Nguyen did not come to court and was told Nguyen would be "baptized."

On May 12, appellant arrived from New Orleans. The following night, Khaundrica Williams, a friend of his and Magee's, drove appellant to the home of her friend, Leslie Bullock

Renchelle Dixon testified that on the morning of May 14, she had a conversation with her sisters Crystal and Christair. They then took a walk and saw a body. One of them called 911. Police arrived and determined the body, identified as Nguyen, had been shot twice — once in the abdomen and once in the head. Sergeant Hector Garcia testified "because it was so difficult to see the body from the street, that they had to have had previous knowledge that the body was there."

Also on the morning of May 14, Bullock saw Williams and appellant watching a video on Bullock's computer. Williams and appellant asked Bullock to drive them to southwest Houston. Appellant gave Bullock directions and they eventually drove near enough to Nguyen's house to see it was surrounded by police cars and crime scene tape. Appellant commented, "They must have found him."

When they returned to Bullock's house, she recalled the browser history on her computer and found the video from the robbery as well as the incident on the street they had just driven past. Bullock heard appellant talking to Williams.

Appellant said, "something about going to somebody's house and somebody was being shot. . .." Based on the conversation she heard, Bullock thought it was appellant who did the shooting. Bullock testified, "I heard him saying something about the door was being knocked on and he went to shoot. . . I only can say what I heard him say. So somebody knocked at the door and he shot a couple of times and somebody got shot." Bullock saw appellant make a hand gesture like he was holding a rifle and heard him say, "When he opened the door, I smashed him. I hit him, so he out of there." Bullock heard appellant tell Williams about going to the jail and speaking with someone regarding the crime scene they had driven past. Bullock recalled hearing Nguyen's name. Officer Costin testified that when Magee learned of Nguyen's death, he "was ecstatic."

Williams and appellant were arrested after buying gas at the same Phillips 66. Capital murder charges were filed against appellant, Williams, Jordan, and Magee. Williams testified against appellant at trial.

The non-accomplice evidence set forth above tends to connect appellant to the offense. The phone calls made by Magee from jail are evidence from which a rational jury could have found that appellant came to town to prevent Nguyen from testifying against Magee on the robbery charge. Nguyen was killed the day after appellant arrived in Houston. Bullock's testimony regarding what she found on her computer, the drive past Nguyen's residence at appellant's directions, and what she overheard clearly links appellant to the shooting and shows a rational jury could have concluded that the evidence sufficiently tended to connect appellant to the offense. Accordingly, we hold the State presented sufficient non-accomplice corroborating evidence to support accomplice Williams' testimony.

Accomplice Witness Evidence

In addition to the evidence set forth above, the jury heard the testimony of accomplice witness Khaundrica Williams. According to Williams, on May 13, appellant called her for a ride. Late than night, appellant asked Williams for her car keys; she refused because she thought appellant was intoxicated. Instead, Williams drove Jordan and appellant to a "trap house" that Magee and his gang used for dealing drugs. Appellant and Jordan entered the house while Williams, high on Xanax, remained in the car.

When Jordan and appellant returned, Jordan was carrying a rifle like the one Williams had seen in a video released to the media of the Phillips 66 robbery. Appellant directed Williams to drive to an alley near Nguyen's home. Appellant exited the car with the rifle and walked off. A short time later Williams heard two gunshots. Appellant returned to the car with the gun. Appellant and Jordan told Williams to drive away but she was afraid and refused. Williams got into the backseat and Jordan drove them back to the trap house.

After appellant and Jordan exited the car, Jordan left and appellant carried the rifle into the house. Appellant then returned to the car without the rifle. One of Magee's other associates emerged from the house and signaled Williams to remain quiet.

The testimony of Williams, corroborated by Bullock, is sufficient evidence from which a rational trier of fact could have found beyond a reasonable doubt that appellant committed the offense. *See Gear v. State*, 340 S.W.3d 743, 746 (Tex. Crim. App. 2011); *see also Jackson v. Virginia*, 443 U.S. 307, 318–19 (1979). We therefore conclude the evidence is legally sufficient to support appellant's conviction and overrule appellant's second point of error.

ADMISSION OF PHOTOGRAPHIC EVIDENCE

Appellant's first point of error claims the trial court erred in admitting a crime-scene photograph of Nguyen's body into evidence because of its gruesomeness. The complained-of photograph is State's Exhibit 87. Appellant's objection that the photograph is more prejudicial than probative was overruled by the trial court. *See* Tex. R. Evid. 403.

The record reflects State's Exhibit 87 is a photograph of Nguyen's body when it was discovered. It shows most of his head is missing and a portion of his brain has spilled out. "The decision to admit or exclude photographic evidence is generally left to the sound discretion of the trial court. In deciding whether photographs are unfairly prejudicial, we must also consider the following factors: the number of photographs, the size, whether they are in color or black and white, whether they are gruesome, whether any bodies are clothed or naked, and whether a body has been altered by autopsy." *Prible v. State*, 175 S.W.3d 724, 734 (Tex. Crim. App. 2005).

The number of complained-of exhibits is one. The photograph in the appellate record is in color and slightly less than 8 ½ by 11 inches. The body is clothed and has not been altered by autopsy. The photograph depicts the complainant's body as discovered. Photographs depicting the location of a body at the crime scene and the complainant's injuries are relevant. *Shuffield v. State*, 189 S.W.3d 782, 787 (Tex. Crim. App. 2006). "A visual image of the injuries appellant inflicted on the victim is evidence that is relevant to the jury's determination. The fact that the jury also heard testimony regarding the injuries depicted does not reduce the relevance of the visual depiction." *Gallo v. State*, 239 S.W.3d 757, 762 (Tex. Crim. App. 2007).

Even if photographs are gruesome, their probative value is not substantially

outweighed by the danger of unfair prejudice under Rule 403 if "they are no more gruesome than the crime scene itself as it was found by the police." *Shuffield*, 189 S.W.3d at 787. Photographs of a complainant's injuries are admissible under Rule 403 if they "show only the injuries that the victim received and are no more gruesome than would be expected." *Id*. at 787–88. Although the exhibit is disturbing and graphic, it is "no more gruesome than would be expected in this sort of crime." *Gallo*, 239 S.W.3d at 763. Considering the requisite factors, we cannot conclude that the prejudicial effect of the disputed photograph substantially outweighed their probative value. *See Moralez v. State*, 450 S.W.3d 553, 568–69 (Tex. App.—Houston [14th Dist.] 2014, pet. ref'd) (determining trial court did not err in admitting photographs or a DVD recording of the discovery of the complainant's body).

Accordingly, we find the trial court did not abuse its discretion in admitting the exhibit. Appellant's first issue is overruled.

CONCLUSION

Having overruled both of appellant's issues, the judgment of the trial court is affirmed.

/s/ John Donovan
Justice

Panel consists of Justices Christopher, Jamison, and Donovan.
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