**In The**

***Court of Appeals***

***Ninth District of Texas at Beaumont***

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**NO. 09-07-369 CR**

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**KEVIN RASHAWN WRIGHT, Appellant**

**V.**

**THE STATE OF TEXAS, Appellees**

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**On Appeal from the 411th District Court**
**Polk County, Texas**
**Trial Cause No. 19123**

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**MEMORANDUM OPINION**

A jury found appellant Kevin Rashawn Wright guilty of murder and assessed a term of fifty years of confinement as punishment. *See* TEX. PEN. CODE ANN. § 19.02(b)(1) (Vernon 2003). In two issues, appellant challenges the legal and factual sufficiency of the evidence supporting his murder conviction. We affirm.

The jury observed two taped interviews of appellant by law enforcement. Appellant stated that on Saturday, May, 13, 2006, he was living in Houston and returned a call from his

sister, Angela. Angela told him that she and her boyfriend, "Junior Boy" (Clayton Junior Jones), had an argument and he had physically assaulted her. Appellant was planning to come to Livingston that day. On the way back from the store in Houston that day, appellant saw "D Black" (Jackie Welch), whom appellant had known for about two months, but he did not know his real name. He told Welch about the fight between his sister and her boyfriend and that he was going "to the country" to see his mother in Livingston for Mother's Day. Welch asked to go with appellant too because he wanted to go to the country to shoot his pistol.

Angela picked up appellant and Welch at appellant's apartment that afternoon. Angela showed appellant a bite mark and bruises on her. Welch had his pistol in a dark-colored backpack. They went to appellant's mother's house. Appellant and Welch then drove to the "West End." Welch asked appellant what he was doing, and appellant said he was looking for Angela's boyfriend. Appellant wanted to "have words" with Jones, or "knock a tooth out or two ."

While driving, appellant saw Jones huddled with several other people and so appellant decided not to stop. Appellant and Welch drove to appellant's grandfather's house and both shot Welch's gun into the woods. Welch ran out of bullets and they attempted to purchase bullets at Wal-Mart but could not because they did not have identification. Appellant called his cousin, Reginald, who went with them to purchase bullets for them at Wal-Mart. Welch

shot the gun in the backyard of appellant's mother's house. Later that afternoon, at appellant's mother's house, appellant, Welch, Angela, Reginald, and a couple of children were outside. Jones drove up, walked up to the porch, and began arguing with Angela. As Jones walked off the porch, he threatened to come back and "set it off." Appellant started to follow Jones. Welch and Jones exchanged words and Welch shot Jones several times. Appellant stated he had no idea Welch would shoot Jones.

Appellant saw Jones take his last breath. He dragged Jones over close to the ditch across the street. Appellant and Welch then drove back to Houston. Welch was in a daze and was saying "I [did] it for you, man." They returned to appellant's apartment in Houston and Welch got out with his backpack and gun.

Reginald, appellant's cousin, testified. His testimony corroborated appellant's video statements.[1]

Titania Davis testified that on May 12, 2006, she witnessed a fight between Clayton Junior Boy Jones and Desmond Austin at a night club. Later that night, Davis saw Jones slap Angela and Angela hit Jones in the head with the keys. Angie said she was going to call her brother because Jones slapped her.

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[1]The jury also observed taped interviews of Jackie Welch but the court instructed the jury that Welch's confessions were admitted solely in Welch's case and could not be considered as evidence against Wright, or in any way connect Wright to the offense.

Around 4:45 a.m. the next morning, Polk County patrolman William Jerry was dispatched to Williams Village I in response to a report of a "drunk guy in the ditch." At first, Jerry could not locate anyone in the ditch so he obtained the address of the complainant from dispatch. He asked Angela where the intoxicated person was, and she pointed towards the person. He found Jones, deceased, in the ditch. During the crime scene investigation, detectives obtained nine shell casings from a nine millimeter gun off to the side of the porch.

Dr. Kathryn Haden-Pinneri, assistant medical examiner with the Harris County Medical Examiners Office performed Jones' autopsy. At some point during the transport of Jones' body from the scene to the examiner's office, Jones' arm was broken. Pinneri noted small abrasions on his body and swelling and bruising around his right eye. She determined the cause of Jones' death to be multiple gunshot wounds. She identified seven gunshot wounds.

Appellant challenges the legal and factually sufficiency of the evidence supporting the jury's verdict and contends the State failed to prove he participated as a party to the murder.[2] A legal sufficiency review requires us to view the evidence in the light most favorable to the verdict and determine whether any rational trier of fact could have found the essential elements of the offense beyond a reasonable doubt. *Jackson v. Virginia*, 443 U.S. 307, 318-19, 99 S.Ct. 2781, 61 L.Ed.2d 560 (1979); *Ross v. State*, 133 S.W.3d 618, 620 (Tex.

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[2]Welch was also convicted of murder and his appeal is pending with this Court.

Crim. App. 2004). The trier of fact is the judge of the weight and credibility of the evidence. *Margraves v. State*, 34 S.W.3d 912, 919 (Tex. Crim. App. 2000). Thus when performing a legal sufficiency review, an appellate court does not re-evaluate the weight and credibility of the evidence to substitute its judgment for that of the fact-finder. *Dewberry v. State*, 4 S.W.3d 735, 740 (Tex. Crim. App. 1999). We must resolve inconsistencies in the evidence in favor of the verdict. *Matson v. State,* 819 S.W.2d 839, 843 (Tex. Crim. App. 1991).

When reviewing the factual sufficiency of the evidence, we view all the evidence in a neutral light. *Watson v. State*, 204 S.W.3d 404, 414 (Tex. Crim. App. 2006). We will set aside the verdict only if: (1) the evidence supporting the conviction, although legally sufficient, is nevertheless so weak that the fact-finder's determination is clearly wrong and manifestly unjust; or (2) the verdict is against the great weight and preponderance of the evidence. *Id.* at 414-15, 417; *Sells v. State,* 121 S.W.3d 748, 754 (Tex. Crim. App. 2003).

The trial court instructed the jury on the law of parties. Appellant's conviction may be upheld upon proof that the offense was committed "by his own conduct, by the conduct of another for which he is criminally responsible, or by both." TEX. PEN. CODE ANN. § 7.01(a) (Vernon 2003). 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. PEN. CODE ANN. § 7.02(a)(2) (Vernon 2003).

Evidence is sufficient to convict a defendant under the law of parties when he or she is physically present at the commission of the offense and encourages the commission of the offense either by words or by other agreement. *Salinas v. State*, 163 S.W.3d 734, 739 (Tex. Crim. App. 2005). While the presence of an accused at the scene of an offense is not alone sufficient to support a conviction, it is a circumstance tending to prove guilt, which, combined with other facts, may suffice to show that the accused was a participant. *Beardsley v. State*, 738 S.W.2d 681, 685 (Tex. Crim. App. 1987). Participation in an enterprise may be inferred from circumstances and need not be shown by direct evidence. *Id.* at 684.

Appellant argues there is no evidence that he solicited, encouraged, directed, aided, or attempted to aid Welch in murdering Jones, or that appellant acted with intent to promote or assist Welch in the murder. Specifically, appellant maintains there was no evidence (1) that bullets fired by Welch actually caused Jones' death; (2) of the caliber of the spent projectiles recovered during Jones' autopsy; (3) that the spent projectiles recovered during Jones' autopsy were fired from the same firearm; (4) as to where Jones went after the shooting; (5) as to how Jones' body got from Angela's mother's yard to the ditch; and (6) as to how Jones received his post-mortem injuries.

Reginald testified he heard at least six shots from the nine millimeter. He witnessed Jones fall to the ground. Reginald identified Welch as the shooter and Welch admitted shooting Jones. Pinneri testified that at least one of the gunshots would have been a "fairly

instantly fatal injury." Appellant testified he saw Jones take his last breath. Appellant admitted moving the body by himself.

Pinneri identified insect activity to the body, decomposition of the body, and a broken left arm as Jones' post-mortem injuries. She testified that the broken arm occurred during the transport of the body from the crime scene to the examiner's office and that the injury most likely resulted from the difficulty in getting his body, which was muscular and in a state of rigor mortis, into the body bag. She could not determine whether the swelling or bruising around Jones' right eye occurred around the time of the gunshot wounds. When asked to assume that Jones had been in a fight the night before, Pinneri stated that the injury was consistent with an injury that could have been received at that time.

The morning of the shooting, Angela told appellant that Jones had assaulted her. She picked appellant and Welch up in Houston and brought them back to Livingston. The jury heard appellant admit he went looking for Jones in the "West End," and that he wanted to hurt Jones for assaulting his sister. Appellant stated he knew Welch was going to bring a gun. They both test-fired the gun the day of the shooting. When the argument on the porch began, Welch moved to the backseat of the vehicle. The jury could have reasonably believed that appellant knew Welch was going to shoot Jones. On this record, the jury could have reasonably believed that appellant, either by words or agreement, encouraged Welch in murdering Jones, and was a participant in the crime. The evidence is legally and factually

sufficient to support the jury's verdict. Issues one and two are overruled. The judgment is affirmed.

AFFIRMED.

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DAVID GAULTNEY
Justice

Submitted on May 27, 2008
Opinion Delivered August 13, 2008
Do Not Publish

Before McKeithen, C.J., Gaultney and Kreger, JJ.