

In The
Court of Appeals
Ninth District of Texas at Beaumont

NO. 09-16-00167-CR

MELVIN SPIKES III, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the 252nd District Court
Jefferson County, Texas
Trial Cause No. 12-14810

MEMORANDUM OPINION

A jury convicted appellant, Melvin Spikes III¹ of capital murder, and the trial court sentenced him to life without the possibility of parole. *See* Tex. Penal Code Ann. § 19.03(a)(2) (West Supp. 2016). In one issue, Spikes complains that the evidence was insufficient to support his conviction. We affirm.

¹ Melvin Spikes III is also known as Melvin Spikes.

I. Background

At the time of his death in June 2012, Emerson Franklin was a seventy-six year old deacon and treasurer for his local church. He was also a carpenter by trade, and had been working for several years for Charlie Jones, also a member of Franklin's church. A few months prior to Franklin's murder, Jones discussed with Franklin that they needed extra help on a particular house they were working on, and Franklin recommended that Jones hire Spikes, another member of their church. As they lived just a few blocks from one another, Franklin frequently gave Spikes a ride to and from their jobsites. Franklin drove a black truck that he was very protective of and only let other people drive with him present.

On the morning of Friday, June 15, 2012, Franklin visited his girlfriend at her home before going to work at a job site with Spikes and Jones. Franklin also spoke to his girlfriend by phone later in the day, at which time Franklin told her he planned to go home after work and clean up and would see her later in the evening.

At the end of the workday, Jones gave Spikes a ride home. Before dropping Spikes off, Jones stopped at Franklin's house, where Jones paid Franklin approximately \$300 in cash and paid Spikes over \$200 in cash. Jones then dropped Spikes off at home. Despite Franklin's stated plans to go to his girlfriend's house

after work, she did not see or hear from him again on Friday. She did not see him at all Saturday either, and he did not answer her calls.

On Sunday morning, Franklin did not attend church, which was highly unusual. The church's pastor became concerned about Franklin's absence, so he, along with another deacon at the church, went to Franklin's home to check on him. When they arrived, they noticed that Franklin's truck was missing, and the front door of the home was halfway open. They walked into the home, calling Franklin's name, and found the home in shambles, as though a scuffle or struggle had occurred. The deacon then found Franklin's body in the bathroom. The body was lying face down in the bathtub, partially submerged in water, with his hands bound by his sides. The pastor and deacon backed out of the house and called the police. Franklin's girlfriend, who had also decided to check on Franklin that morning, arrived as they were exiting the home. They told her Franklin was deceased and prevented her from entering the home.

Officers with the Jefferson County Sheriff's Office arrived twenty-five minutes later. An investigation of the scene indicated that the front door had been damaged, possibly kicked in or broken down. The inner trim of the door was broken and the dead bolt plunger was out, indicating someone had forced entry into the home while the dead bolt was locked. Officers found a dark red bloodstain on the

floor in the living room and a broken piece of belt next to the bloodstain. Franklin's body was in the bathtub with his hands bound to his body by an electrical cord believed to have been pulled from a lamp. As the body was removed from the tub, officers found a cellphone and another piece of belt underneath. The electrical cord was removed and taken into evidence, along with the two belt pieces and other items. The cellphone was later determined to belong to Franklin, and the breakpoint of the belt piece under Franklin's body in the bathtub matched the one found in the living room, indicating that they were most likely two pieces of the same belt.

After securing and processing the home, officers located Franklin's truck in an empty grassy area along nearby railroad tracks. Two individuals found in the vicinity of the truck were detained and questioned but were ultimately cleared as coincidental bystanders.

Based on the location of the abandoned truck, officers checked video surveillance from local stores and were able to locate a video from a nearby convenience store clearly showing an individual driving Franklin's truck to the store and going inside to make a purchase shortly before police arrived at Franklin's home that morning. A still frame printout from the video was shown to the deacon who found Franklin's body, and he was able to identify the man as Spikes.

Officers located Spikes and brought him in to the Sheriff's Office. Spikes was initially cooperative and gave a voluntary written statement. In that statement, Spikes claimed to have last seen Franklin at the church just after 7:00 p.m. the previous Friday. He stated that he went to his brother's house afterwards, then returned home and went to bed shortly after midnight. The statement further states that Spikes learned of Franklin's death from his mother and the pastor's wife on Sunday morning.

After Spikes signed the first statement, he was shown an image from the surveillance video from the convenience store of him driving Franklin's truck and asked to explain. At that point, Spikes's demeanor changed. He became very upset and nervous, and he indicated that he needed to provide the police another statement to "straighten some things out."

In the second statement, provided within hours of the first, Spikes explained that he did not go to bed around midnight on that Friday, but rather was outside when a man named Tony Bennett drove up asking for money. Spikes claimed that when he told Bennett he had no money, Bennett told him he was "going to sting a lick," which Spikes took to mean he was going to "jack something or someone." Spikes then stated that Bennett and another male passenger in Bennett's car parked and walked in the direction of Franklin's home, and they returned thirty minutes later

with a “wad of cash” and Franklin’s truck. The men also made statements indicating to Spikes that Bennett had “hurt Mr. Franklin.” Spikes claimed that Bennett then had him assist in getting rid of Franklin’s truck.

Following Spikes’s second statement, the police interviewed Bennett and several other witnesses to verify the account Spikes provided them in his second statement. Based on police interviews of these witnesses, the police ultimately determined that Spikes’s story was not credible, even though Bennett’s statement was not completely inconsistent with that from Spikes.² These interviews also led the officers to a pawn shop in Beaumont, where they retrieved a gold necklace that Spikes had pawned late Saturday morning. That gold necklace was ultimately identified by Franklin’s brother as a necklace that belonged to Franklin.

The autopsy on Franklin’s body revealed the cause of death to be ligature strangulation, and the manner of death was homicide. The forensic pathologist that conducted the autopsy testified that the belt collected in pieces at the scene could have been the cause of the ligature marks around Franklin’s neck, although he could not say for certain that the belt was the murder weapon, as the marks could have

² Testimony at trial indicated that part of what the officers relied on in discrediting Spikes’s second statement was information that Bennett’s car, which Spikes claimed to have ridden in periodically throughout the weekend and including Sunday morning, had broken down on Friday evening and was towed from the church and thus, was unavailable for his use.

been caused by another item of the same width. Forensic testing on the belt pieces yielded no decent fingerprints but did yield DNA. Analysis of that sample concluded to a reasonable degree of scientific certainty, that, excluding identical twins or very close relatives, the major DNA profile obtained from the belt swabs was a match to Spikes's DNA.

A grand jury indicted Spikes for capital murder, specifically alleging that Spikes had caused Franklin's death by strangling him with an unknown object while in the course of committing or attempting to commit burglary. *See* Tex. Penal Code Ann. § 19.03(a)(2). Shortly before trial, the State elected not to seek the death penalty. After several days of trial, which included testimony of nearly two dozen witnesses, a jury found Spikes guilty of capital murder, and the trial court sentenced him to life in prison without the possibility of parole. The trial court certified Spikes's right to appeal, and this appeal timely followed.

II. Sufficiency of the Evidence

To obtain a conviction for capital murder in this case, the State was required to prove that Spikes intentionally or knowingly caused Franklin's death and that he did so in the course of committing or attempting to commit burglary. *See* Tex. Penal Code Ann. §§ 19.02(b)(1) (West 2011), 19.03(a)(2).

In his sole issue on appeal, Spikes contends that the evidence is wholly circumstantial and insufficient to support the jury's guilty verdict. He argues that there was no eyewitness to the murder, and the State failed to introduce any direct evidence that he was the one who inflicted the injuries. He further argues that "the evidence at best established that [he] participated with Bennett in the proceeds of the crime after it occurred."

A. Standard of Review

To properly assess the sufficiency of evidence supporting a jury's verdict of guilt, a reviewing court must "consider all the evidence in the light most favorable to the verdict and determine whether, based on that evidence and reasonable inferences therefrom, a rational juror could have found the essential elements of the crime beyond a reasonable doubt." *Hooper v. State*, 214 S.W.3d 9, 13 (Tex. Crim. App. 2007) (citing *Jackson v. Virginia*, 443 U.S. 307, 318–19 (1979)). In doing so, we defer to the jury's factual findings and resolve all reasonable inferences in favor of their verdict, as the jury is the sole judge of the credibility of witnesses and the weight to be afforded to the testimony of each. *Dobbs v. State*, 434 S.W.3d 166, 170 (Tex. Crim. App. 2014); *Brooks v. State*, 323 S.W.3d 893, 902 (Tex. Crim. App. 2010). The jury may choose to believe or disbelieve any witness, or any portion of a witness's testimony. *Sharp v. State*, 707 S.W.2d 611, 614 (Tex. Crim. App. 1986).

In his brief on appeal, Spikes relies upon several cases wherein the evidence presented at trial, all of which was circumstantial, was deemed legally insufficient, requiring reversal of the conviction. In each of these, the respective court held that, although the evidence led to “a strong suspicion or mere probability” that the appellants committed the offenses for which they were charged, the evidence did not “exclude[] to a moral certainty every other reasonable hypothesis except [their] guilt.” See *Skelton v. State*, 795 S.W.2d 162, 167, 169 (Tex. Crim. App. 1989); *Nathan v. State*, 611 S.W.2d 69, 75, 78 (Tex. Crim. App. [Panel Op.] 1981); *Stogsdill v. State*, 552 S.W.2d 481, 486 (Tex. Crim. App. 1977); *Flores v. State*, 551 S.W.2d 364, 369 (Tex. Crim. App. 1977). Spikes cannot rely on these cases, however, as all of the cases he relies upon were decided by using “an outmoded approach to reviewing the sufficiency of circumstantial evidence” that has since been consistently rejected. See, e.g., *Matson v. State*, 819 S.W.2d 839, 842–43 (Tex. Crim. App. 1991) (calling the appellant’s reliance upon *Nathan* “seriously flawed” and disavowing the language used by the *Nathan* Court). In *Geesa v. State*, the Court of Criminal Appeals extensively analyzed the development and evolution of what it termed the “reasonable hypothesis analytical construct” and expressly “reject[ed] its use as a method of appellate review for evidentiary sufficiency” in criminal cases in Texas. 820 S.W.2d 154, 156–61 (Tex. Crim. App. 1991), *overruled on other*

grounds, 28 S.W.3d 570 (Tex. Crim. App. 2000). In rejecting the “reasonable hypothesis” construct for appellate review, the Court noted that such a review in circumstantial evidence cases “effectively repudiates the jury’s prerogative to weigh the evidence, to judge the credibility of the witnesses, and to choose between conflicting theories of the case.” *Id.* at 159. Thus, it is now well settled that “[d]irect evidence and circumstantial evidence are equally probative, and circumstantial evidence alone may be sufficient to uphold a conviction so long as the cumulative force of all the incriminating circumstances is sufficient to support the conviction.” *Ramsey v. State*, 473 S.W.3d 805, 809 (Tex. Crim. App. 2015); *see also Carrizales v. State*, 414 S.W.3d 737, 742 (Tex. Crim. App. 2013) (holding that “[i]t is not necessary that the evidence directly proves defendant’s guilt; circumstantial evidence is as probative as direct evidence in establishing the guilt of the actor”).

Viewing all of the evidence under these established standards, we find that the combined, cumulative force of the various incremental pieces of circumstantial evidence is sufficient to support the verdict. *See Clayton v. State*, 235 S.W.3d 772, 778–79 (Tex. Crim. App. 2007).

B. Evidence supporting conviction

The evidence showed that Spikes was with Franklin when he was paid on Friday before the murder, so Spikes knew that Franklin would have at least several

hundred dollars cash on hand. Even according to the account Spikes gave to police, he was one of the last people to see Franklin alive before the burglary and murder occurred. Spikes also lived within a few blocks of where the murder occurred, so Spikes had easy access to the scene. The jury could reasonably infer that Franklin was killed sometime Friday night, as he was expected at his girlfriend's house that evening and she never saw or heard from him that night. The forensic pathologist that conducted the autopsy testified that that timeline was "entirely possible," given the amount of decomposition he found on the body.

From the testimony in the trial, the jury could reasonably conclude that Franklin was murdered after someone forcibly entered and ransacked his home. The testimony allowed the jury to conclude that Spikes pawned a necklace owned by Franklin on Saturday, the day before the murder was discovered. Spikes's statements to police fail to explain why he had Franklin's necklace. The jury also saw evidence allowing the jury to conclude that Spikes was seen driving Franklin's truck to a convenience store shortly before Franklin's body was discovered on Sunday. The testimony shows that police found Spikes's DNA on the belt underneath Franklin's body.

Additionally, the jury was provided evidence that Spikes lied to police about his knowledge of or involvement with the events surrounding Franklin's murder.

Spikes argues on appeal that his two conflicting statements to law enforcement “were logical and exculpatory, even if they contained facts which placed [him] in a suspicious light.” The jury could reasonably conclude that the statements were inconsistent and to infer that Spikes made false statements to the police to avoid his responsibility for the part he played in Franklin’s murder. Spikes, after being confronted with the evidence that he had been identified on security video driving Franklin’s truck, did not merely elaborate on his story or “clarify some events that occurred;” instead, he changed pertinent details about what he did that weekend entirely, which revealed that his first statement was substantially false. For example, Spikes claimed in his first statement that he noticed Franklin’s truck was not at home as he drove by the house Saturday morning but did not think much of that because Franklin often stayed with his girlfriend on the weekend. This was clearly a lie, as in his second statement, Spikes indicated that he was the one who drove Franklin’s truck to a grassy spot near a railroad track and left it there on Friday night. Spikes’s original statement that “[o]n Sunday morning . . . I left my mother’s house to go and visit my sister” became “I called my sister . . . and told her to come pick me up [after moving and abandoning Franklin’s truck on the side of the road]” in the second statement. Moreover, the second statement Spikes gave to the police contains internal inconsistencies of its own. For example, Spikes claimed that he did not know

Franklin had been killed, but then claimed in the very next sentence that he “did not go and check on [Franklin] because I was afraid everyone would think I killed him.”

False statements and contradictory statements provided to law enforcement evidence a consciousness of guilt, and the jury was authorized to consider such conduct as circumstantial evidence of Spikes’s guilt. *See King v. State*, 29 S.W.3d 556, 565 (Tex. Crim. App. 2000) (providing that false statements made by appellant to cover up crime, evidencing a consciousness of guilt, was admissible to prove commission of the offense); *Longoria v. State*, 154 S.W.3d 747, 757 (Tex. App.—Houston [14th Dist.] 2004, pet. ref’d) (finding that an attempt to procure false alibi was some evidence of guilt). Given the blatancy of the falsehoods in Spikes’s first statement to police and the timing of his attempt to “clarify” events in the second, the statements provide evidence from which the jury could rationally infer a consciousness of guilt. *See Torres v. State*, 794 S.W.2d 596, 598 (Tex. App.—Austin 1990, no pet.) (noting that consciousness of guilt is “one of the strongest kinds of evidence of guilt”).

The jury in this case had the opportunity to review Spikes’s statements and to consider whether the information he provided was inconsistent with the other testimony and evidence admitted during his trial. Based on all of the evidence, the jury was entitled to conclude that Spikes’s statements were materially false and to

infer from the fact that he attempted to provide a false account that he participated in Franklin's murder. According due deference to the jury's exclusive right to determine the credibility of the witnesses and the weight to attach to the evidence and viewing all of the admitted evidence in the light most favorable to the verdict, we find that there is sufficient evidence by which the jury could have found beyond a reasonable doubt that Spikes was guilty of Franklin's murder, and that the murder was committed in the course of a robbery. We therefore overrule Spikes's appellate issue and affirm the trial court's judgment.

AFFIRMED.

CHARLES KREGER
Justice

Submitted on October 10, 2017
Opinion Delivered November 8, 2017
Do Not Publish

Before Kreger, Horton, and Johnson, JJ