



**COURT OF APPEALS
SECOND DISTRICT OF TEXAS
FORT WORTH**

NO. 02-15-00329-CR

WALTER KNIGHT

APPELLANT

V.

THE STATE OF TEXAS

STATE

FROM THE 432ND DISTRICT COURT OF TARRANT COUNTY
TRIAL COURT NO. 1380476D

MEMORANDUM OPINION¹

I. INTRODUCTION

Appellant Walter Knight appeals his conviction for murder while using a deadly weapon, a firearm. In eight points, Knight argues that the evidence is insufficient to support his conviction and that the trial court erred by overruling his rule 403 objections to certain evidence. We will affirm.

¹See Tex. R. App. P. 47.4.

II. BACKGROUND

Shaquita Sawyer testified that on August 4, 2014, she, Chazmon Gipson, and another friend had just returned to the Cambridge Court Apartments from buying breakfast when she saw Knight jogging toward the truck the three were exiting. According to Sawyer, Knight pointed a black handgun at them and fired it multiple times in their direction. Sawyer said that Knight was acting very aggressively and was yelling at Gipson, alleging that he had heard that Gipson intended to shoot him. Sawyer averred that Gipson pleaded with Knight not to shoot and that Gipson then fled while Knight pursued. Sawyer said that she chased after them and came upon Gipson lying on a sidewalk, bleeding and barely breathing—he had been shot in the head. After a passerby assisted her in contacting 9-1-1, Sawyer spoke with police when they arrived on the scene. A recording of Sawyer's 9-1-1 call was played for the jury. By Sawyer's account, emergency personnel took Gipson to the hospital in an ambulance and she later learned that he died there.

Sawyer recalled how she gave police a description of Knight, which included that he was wearing a gray tank-top "muscle shirt" and basketball shorts. Sawyer also averred that she was familiar with Knight because her mother had dated him and because she knew that Gipson and Knight had argued prior to the shooting. She also said that she identified him to police from a police photo-array shortly after the shooting. As Sawyer testified, the State introduced and published photographs taken by another witness. Sawyer

averred that the pictures were accurate depictions of Knight on the day of the shooting and that they depicted him wearing the tank top and shorts she had seen him in that day. She also said that she knew Knight to be a fan of and wear memorabilia for the Oakland Raiders.

America Canas testified that on August 4, 2014, she was on her way to visit her boyfriend's mother at the Cambridge Court Apartments when she heard the sound of gunshots coming from the apartments' parking lot. Shortly after hearing the gunshots, Canas said she saw an African-American male wearing shorts and a tank-top shirt, wrapping a handgun in a T-shirt as he exited the gate of the Cambridge Court Apartments. Canas said that the only portion of the gun she could clearly see was the handle—she said the handle was black. According to Canas, the man was evilly laughing and running. Canas said that eventually the man tucked the wrapped gun into his shorts and jumped over a nearby fence. Canas said that she then encountered Sawyer, hovering and crying over Gipson as he lay bleeding on the sidewalk. Canas then called 9-1-1 using Sawyer's phone and handed the phone to Sawyer.

Dorleta Johnson testified that she lives at the Cambridge Court Apartments and that on August 4, 2014, she heard what she believed were fireworks. After getting out of bed and going to her patio to investigate, she saw a man chasing another man. Soon after, Johnson said that she saw a woman running after both of them and screaming. Johnson said that the woman looked like she was scared and as if "she was trying to stop something from happening." Johnson

witnessed the woman suddenly stop and scream very loudly. Johnson went to investigate further and found Sawyer and the man she had seen being chased earlier, who was lying on the ground.

Edwin Joel Mendez testified that he was painting the ceilings of a nearby apartment complex when he heard the sounds of gunfire coming from the Cambridge Court Apartments. Mendez said that when he ran to investigate, he witnessed an African-American male, wearing shorts, jump over the Cambridge Court Apartment's fence into the yard of a neighboring retirement home. Utilizing photographs introduced and published by the State, Mendez described how and what he had seen.

Mendez averred that the man he saw jumping over the fence was carrying what appeared to be a black handgun. Mendez said that the man repeatedly pulled the gun in and out of the waistband of his shorts, seemingly looking for somewhere to hide the gun, and eventually hid the gun near the retirement home. Mendez said that even though he initially struggled to unlock his phone, he eventually successfully took pictures of the man as he was walking away from the nursing home.

Police Officer James Reynolds of the Fort Worth Police Department testified that he received a dispatch to the Cambridge Court Apartments on the day of the shooting. Reynolds averred that he quickly made contact with as many of the gathered citizens as he could in hopes of collecting information. According to Reynolds, one of the individuals at the scene directed him to an

area in front of the nearby retirement home, where Reynolds found a shell casing on the sidewalk. As he continued investigating, Reynolds said that he found other shell casings.

During Reynolds's time on the stand, the State introduced and published photographs of what Reynolds testified were accurate depictions of the sidewalk where Gipson was found shortly after he had been taken away by the ambulance, as well as accurate depictions of where the shell casings were found. He also averred to the accuracy of photographs demonstrating the spatial relationship of the Cambridge Court Apartments and the retirement home. Reynolds further testified regarding what he averred was the apparent damage to nearby structures between the Cambridge Court Apartments and the retirement home. Reynolds said that the damage appeared to have been caused by multiple gunshots and that the trail of damage ended at the point on the sidewalk where Gipson had been found shot.

Reynolds said that after other investigators arrived, he climbed the fence between the Cambridge Court Apartments and the nursing home, effectively tracking the movements of Knight as witnesses had described them to him. After searching near the retirement home, Reynolds found a black handgun under a bush. According to Reynolds, because of the manner in which the side chamber remained open on the gun, he could tell that whoever had shot the handgun had fired it until it ran out of ammunition. Pictures of where and how the gun appeared when Reynolds found it were admitted and published to the jury.

After finding the gun, Reynolds returned to the Cambridge Court Apartments and observed damage from gunshots in a location consistent with Sawyer's statement and eventual testimony, that Knight had fired the gun in her and Gipson's direction immediately preceding his pursuit of Gipson.

Police Officer Robert Presney of the Crime Scene Search Unit for the City of Fort Worth Police Department testified that he began to investigate the shooting at the hospital shortly after Gipson was pronounced dead. While there, Presney confirmed with medical personnel that Gipson had died of a gunshot wound to the head. He also photographed Gipson's remains. The State introduced and published these pictures to the jury. From there, Presney said that he proceeded to the area where Gipson had been shot, where he photographed and then collected the black handgun and casings that had been found by other officers. He also took swabs from the black handgun's grip and trigger, and he attempted to pull fingerprints from it.² Presney said that he was not responsible for testing DNA taken from the gun, but he did testify that wiping the gun with a T-shirt could possibly obscure any DNA that might be found.

Police Officer Susan Shore of the Crime Scene Search Unit for the City of Fort Worth Police Department testified that she also investigated the crime scene after the shooting and that she photographed and collected some of the evidence found there. Of the numerous items Shore collected and that the trial court

²The record does not indicate whether any usable fingerprints or DNA were recovered from the black handgun.

admitted, Knight objected to evidence of the casings and fragments of projectiles found at the crime scene. The trial court overruled these objections.

Detective Jeremy Rhoden of the City of Fort Worth Police Department testified that he interviewed Mendez at the crime scene the day of the shooting. Rhoden said that Mendez showed him the pictures he had taken of the man he saw hiding a gun near the retirement home. Rhoden also collected surveillance footage from a nearby hotel. Still images from the footage and portions of video from that footage from multiple cameras were admitted and published for the jury. Initially, Knight did not object to stills and video portions of the surveillance taken from two different cameras, but Knight did object to similar evidence retrieved from a third surveillance camera. Knight's objection was that he was making "a 403 objection." The trial court overruled the objection.

In the video footage, an African-American male, clothed in shorts and a tank-top shirt, can be seen jogging from a field and lightly wooded area into the parking lot where the surveillance cameras are located. The man can then be seen getting into a vehicle. According to Rhoden, the area where the male is coming from, as well as the timestamps on the surveillance footage, are consistent with witnesses' statements regarding where Knight had fled after he shot Gipson. And according to Rhoden, investigators determined that the vehicle that Knight got into was associated with a person named Anjela Sawyer.³

³The testimony of another witness established that Anjela Sawyer is Shaquita's mother. Shaquita Sawyer averred that she knew Knight to be the assailant because she knew him from having dated her mother.

Detective Tom O'Brien of the City of Fort Worth Police Department testified that he also investigated the shooting. O'Brien said that after Sawyer picked Knight from a photo-array, he and a fellow officer went to Knight's apartment and obtained consent from Knight and his live-in girlfriend to search his apartment. While at the apartment, O'Brien said that he photographed numerous items, including a silver handgun, a pair of black shorts, a gray tank top, and several items with the Raiders' logo on them, including a toboggan.

Mark Porter, a forensic video analyst for the Tarrant County District Attorney's Office, testified that his analysis of the photographs taken by Mendez showed that the person in the images was wearing a black pair of shorts with the letters "A, N, D," and then the "number 1." Porter said that this same letter and number insignia was present on the pair of black shorts photographed at Knight's apartment. Porter also said that his analysis of Mendez's photographs compared to a photograph of a toboggan found in Knight's apartment showed that the person that Mendez photographed was wearing the same type of toboggan as found at Knight's apartment, one bearing the Raiders' emblem.

Doctor Marc Andrew Krouse, deputy chief medical examiner for the City of Fort Worth, testified that Gipson died of a gunshot wound to his head and that his body also demonstrated damage to his face from when he fell to the ground after he was shot. Krouse averred that Gipson's death was a homicide.

Michael Ward, technical leader of the firearms and toolmark unit for the Fort Worth Police Crime Laboratory, testified that fragments of bullets and shell

casings found near Gipson's body, as well as the projectile recovered from Gipson's skull, were a match to the black handgun that officers found near the retirement home.

Amber Scroggins testified that Knight was her ex-boyfriend. According to Scroggins, she was present when police searched Knight's apartment. She averred that Knight's favorite team was the Oakland Raiders and that he frequently wore a toboggan with the Raiders' logo on it.

Detective Kyle Sullivan of the City of Fort Worth Police Department testified that he learned during his investigation that the name of Sawyer's mother was Anjela Sawyer. Sullivan said that he interviewed Sawyer's mother multiple times and that police had learned Knight's name and phone number from her. She then called Knight and let Sullivan talk to him. Knight agreed to meet with Sullivan. Sullivan also testified regarding the authenticity of the police photo-array from which Sawyer picked Knight. The State introduced and published the photo-array for the jury.

Emilio Valdez testified in Knight's defense. Valdez averred that he was Knight's supervisor at Walmart. According to Valdez, Knight was a polite person and showed up to work every day.

The jury returned a verdict of guilty to the charge of murder and an affirmative finding that Knight had used a deadly weapon, a firearm. The jury sentenced Knight to sixty years' confinement. The trial court rendered judgment accordingly, and this appeal followed.

III. DISCUSSION

A. Sufficiency of the Evidence

In his first point, Knight argues that the evidence is insufficient to support his conviction for murder. Specifically, Knight argues that there is no physical evidence linking him to Gipson's murder and that neither his DNA nor his fingerprints were found on the black handgun that police found near the retirement home. In effect, Knight argues that the circumstantial evidence that the State presented at trial is insufficient to prove he murdered Gipson. We disagree.

1. Standard of Review

In our due-process review of the sufficiency of the evidence to support a conviction, we view all of the evidence in the light most favorable to the verdict to determine whether any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. *Jackson v. Virginia*, 443 U.S. 307, 319, 99 S. Ct. 2781, 2789 (1979); *Jenkins v. State*, 493 S.W.3d 583, 599 (Tex. Crim. App. 2016).

This standard gives full play to the responsibility of the trier of fact to resolve conflicts in the testimony, to weigh the evidence, and to draw reasonable inferences from basic facts to ultimate facts. *Jackson*, 443 U.S. at 319, 99 S. Ct. at 2789; *Jenkins*, 493 S.W.3d at 599.

The trier of fact is the sole judge of the weight and credibility of the evidence. See Tex. Code Crim. Proc. Ann. art. 38.04 (West 1979); *Blea v. State*,

483 S.W.3d 29, 33 (Tex. Crim. App. 2016). Thus, when performing an evidentiary sufficiency review, we may not re-evaluate the weight and credibility of the evidence and substitute our judgment for that of the factfinder. See *Montgomery v. State*, 369 S.W.3d 188, 192 (Tex. Crim. App. 2012). Instead, we determine whether the necessary inferences are reasonable based upon the cumulative force of the evidence when viewed in the light most favorable to the verdict. *Murray v. State*, 457 S.W.3d 446, 448 (Tex. Crim. App.), *cert. denied*, 136 S. Ct. 198 (2015). We must presume that the factfinder resolved any conflicting inferences in favor of the verdict and defer to that resolution. *Id.* at 448–49; see *Blea*, 483 S.W.3d at 33.

To determine whether the State has met its burden under *Jackson* to prove a defendant's guilt beyond a reasonable doubt, we compare the elements of the crime as defined by the hypothetically correct jury charge to the evidence adduced at trial. See *Jenkins*, 493 S.W.3d at 599; *Crabtree v. State*, 389 S.W.3d 820, 824 (Tex. Crim. App. 2012) (“The essential elements of the crime are determined by state law.”). Such a charge is one that accurately sets out the law, is authorized by the indictment, does not unnecessarily increase the State's burden of proof or restrict the State's theories of liability, and adequately describes the particular offense for which the defendant was tried. *Jenkins*, 493 S.W.3d at 599. The law as authorized by the indictment means the statutory elements of the charged offense as modified by the factual details and legal theories contained in the charging instrument. See *id.*; see also *Rabb v. State*,

434 S.W.3d 613, 616 (Tex. Crim. App. 2014) (“When the State pleads a specific element of a penal offense that has statutory alternatives for that element, the sufficiency of the evidence will be measured by the element that was actually pleaded, and not any alternative statutory elements.”).

The standard of review is the same for direct and circumstantial evidence cases; circumstantial evidence is as probative as direct evidence in establishing guilt. *Jenkins*, 493 S.W.3d at 599.

2. Murder

Predicated on the indictment, the jury in this case was instructed: “A person commits the offense of murder if he intentionally causes the death of an individual, or acting with the intent to cause serious bodily injury, he commits an act clearly dangerous to human life that causes the death of an individual.” See Tex. Penal Code Ann. § 19.02(b)(1), (2) (West 2011).

3. The Evidence is Sufficient to Support Knight’s Conviction

In this case, viewing the evidence in the light most favorable to the jury’s verdict, the State presented evidence that Sawyer witnessed Knight running toward her and Gipson and that he fired a handgun at them. From there, and immediately after Gipson had pleaded with Knight not to shoot him, Gipson fled and Knight pursued. Sawyer chased after both of them and found Gipson lying on the sidewalk, having been shot in the head. Evidence established that the gunshot was fatal. The evidence established that Sawyer knew who Knight was

prior to this encounter because he dated her mother and had argued previously with Gipson.

The evidence further established that as Sawyer wept over Gipson, Canas saw an African-American male dressed in black shorts and a tank top, wrap a gun in a T-shirt while laughingly evilly, and run away from where Gipson lay on the sidewalk. Immediately after Canas saw this, Mendez saw an African-American male dressed in black shorts and a tank top, jump over the fence between the Cambridge Court Apartments and the neighboring retirement home. Mendez saw the man hide a gun near the retirement home. Mendez also photographed this man, and analysis of these photographs demonstrated that the black shorts, tank top, and toboggan that the man was wearing were consistent with the black shorts, tank top, and toboggan found at Knight's apartment. Officers were even able to match the shorts and toboggan by brand logo and the Raiders' emblem. And multiple witnesses testified that Knight wore Raiders' memorabilia.

The evidence further showed that police found a black handgun, the very type of gun seen by multiple witnesses, near the retirement home that neighbored the Cambridge Court Apartment complex. Police were able to match this handgun to the shell casings and bullet fragments collected where Sawyer testified that Knight had shot toward Gipson as he threatened him moments before Gipson was fatally shot. See *Gilbert v. State*, 494 S.W.3d 758, 766 (Tex. App.—Houston [14th Dist.] 2016, pet. ref'd) (holding that testimony that

defendant shot toward another person multiple times was sufficient to show defendant killed deceased despite no one witnessing the fatal shot). Police were also able to match the black handgun to the projectile recovered from Gipson's skull.

The State also presented evidence, through surveillance footage, that an African-American male wearing black shorts and a tank top jogged into a parking lot neighboring the retirement home at a time immediately after Gipson was shot and that then the man got into a vehicle that police traced to Knight's girlfriend. And the jury had heard testimony from the State's key eyewitness that Knight's girlfriend was her mother and that is how she knew him.

We hold that a rational trier of fact could have found that Knight intentionally caused Gipson's death by shooting him or that he intentionally caused Gipson's death by intending to cause serious bodily injury to Gipson by shooting him with a firearm. *See id.*; *see also Jackson*, 443 U.S. at 319, 99 S. Ct. at 2789; *Jenkins*, 493 S.W.3d at 599. We overrule Knight's first point.

B. Knight's Complaints About the Admission of Evidence

In his second through tenth points, Knight argues that the trial court abused its discretion by overruling his rule of evidence 403 objections to, and by allowing the State to admit into evidence, a myriad of evidence, including the photographs Mendez took, evidence from the surveillance equipment from the nearby motel, photographs of the toboggan cap found at Knight's apartment, comparison diagrams showing similarities between the clothing found at Knight's

apartment and those worn by the man in Mendez's photographs, and ballistics evidence. Knight does not explain how the trial court abused its discretion. Instead, without pointing to any evidence in the record indicating how he arrives at these conclusions, Knight repeatedly argues that the State failed to lay a proper predicate and that the trial court failed to conduct a proper 403 balancing test. After making these arguments, in each of his points, Knight then summarily argues that reversal of his conviction is required because the jury assessed sixty years' confinement. We disagree.

The admission of evidence is a matter within the trial court's discretion. As long as the trial court's ruling is within the "zone of reasonable disagreement," there is no abuse of discretion, and we must uphold the ruling. *Hill v. State*, 303 S.W.3d 863, 876 (Tex. App.—Fort Worth 2009, pet. ref'd).

Rule of evidence 403 provides that relevant evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, misleading the jury, or by considerations of undue delay or needless presentation of cumulative evidence. Tex. R. Evid. 403. In a proper rule 403 analysis, the trial court must balance the inherent probative force of the proffered item of evidence, along with the proponent's need for that evidence, against (1) any tendency of the evidence to suggest decision on an improper basis, (2) any tendency of the evidence to confuse or distract the jury from the main issues, (3) any tendency of the evidence to be given undue weight by a jury that has not been equipped to evaluate the probative force of the evidence, and

(4) the likelihood that presentation of the evidence will consume an inordinate amount of time or merely repeat evidence already admitted. *Gigliobianco v. State*, 210 S.W.3d 637, 641–42 (Tex. Crim. App. 2006). When rule 403 is invoked, the trial court is presumed to engage in the required balancing test, and silence of the record will not imply otherwise. *Williams v. State*, 958 S.W.2d 186, 195–96 (Tex. Crim. App. 1997).

We have reviewed each of the 403 objections that Knight lodged at trial, and the record reveals that when this evidence was introduced, defense counsel objected to admission of the evidence and cited “rule 403.” Each time, the trial court overruled his objection without further comment. We must presume by the trial court’s silence that the trial court engaged in the proper balancing test. See *Williams*, 958 S.W.2d at 195–96 (“[A] judge is presumed to engage in the required balancing test once Rule 403 is invoked and we refuse to hold that the silence of the record implies otherwise.”). Based on this record, we cannot conclude that the trial court abused its discretion by admitting the evidence Knight complains of. Thus, we overrule Knight’s second through tenth points.

IV. CONCLUSION

Having overruled all of Knight’s points on appeal, we affirm the trial court’s judgment.

/s/ Bill Meier
BILL MEIER
JUSTICE

PANEL: WALKER, MEIER, and GABRIEL, JJ.

DO NOT PUBLISH
Tex. R. App. P. 47.2(b)

DELIVERED: February 23, 2017