In The
Court of Appeals
Seventh District of Texas at Amarillo

No. 07-16-00338-CR

JOSE MIGUEL HERNANDEZ, APPELLANT

V.

THE STATE OF TEXAS, APPELLEE

On Appeal from the 181st District Court
Potter County, Texas
Trial Court No. 69,724-B, Honorable John B. Board, Presiding

September 28, 2017

MEMORANDUM OPINION

Before CAMPBELL and PIRTLE and PARKER, JJ.

Appellant, Jose Miguel Hernandez, appeals his conviction for murder[1] and resulting sentence of 65 years' incarceration in the Texas Department of Criminal Justice, Institutional Division. We will affirm the trial court's judgment.

[1] *See* TEX. PENAL CODE ANN. § 19.02(b)(1) (West 2011).

Factual and Procedural Background

On November 23, 2014, Amarillo police officers were dispatched to a residence in reference to an aggravated assault involving a screwdriver. When the first officer arrived, he was escorted into a bedroom where he saw a male lying on the floor with some blood underneath his body. When the officer asked about the weapon, one of the witnesses told him that they had pulled it out of the victim's head to apply pressure to the wound. After being informed that the assailant had left the residence, the officer secured the scene by removing the witnesses and placing them in separate patrol cars.

One of the residents of the house, Alex Magana, said that a group of people were at the house to watch a football game. At some point during the evening, appellant arrived at the residence. According to Alex, appellant was being overly affectionate and "acting drunk." The victim, Sal Ramirez, went into Alex's bedroom to cut his hair. Alex sat on her bed and talked on the phone and texted friends. Appellant stood in the doorway to Alex's bedroom. While she was focused on her phone, Alex heard a noise that caused her to look up and see appellant stab Sal in the temple with a screwdriver. The three people in the room were not talking to one another and appellant and Sal were not fighting at the time of the assault. After appellant stabbed Sal, he told Alex to hang up the phone, which she did. When her brothers ran into the room asking what had happened, appellant said "shh" and then ran away from the house.

One of Alex's brothers, Mark Noriega, also lived at the house and was there when the assault occurred. Appellant and Mark had been friends since middle school.

When appellant arrived at the residence on the evening in question, Mark said that he seemed happy. When Sal went to Alex's room to cut his hair, Mark went to the restroom. While in the restroom, Mark heard what sounded like furniture moving. He then heard his brother Juan asking, "What did you do and why did you do that?" When Mark came out of the bathroom, Juan told Mark that appellant had stabbed Sal in the head with a screwdriver. Upon witnessing the victim, Mark told Alex to call 911.

Juan Noriega also lived at the house. Juan was introduced to appellant by his brother and had become friends some years earlier. On the night of the assault, Juan said that appellant was drunk when he came to the house but described appellant's demeanor as "mellow." As Sal went to Alex's room to cut his hair, Juan walked his girlfriend to her house. After he returned to the house, he heard Alex scream and a door slam behind him. He went to Alex's room to see why she had screamed and saw Sal falling to the floor. When Sal fell into the bed, Juan grabbed him and noticed a screwdriver stuck in the left temple of his head. After Alex called 911, she handed the phone to Juan. The dispatcher coached Juan in how to administer first aid to Sal while waiting on paramedics to arrive. He pulled the screwdriver out of Sal's head and applied pressure to the wound.

The screwdriver that was used to kill Sal was collected and sent to the DPS crime laboratory in Lubbock, where DNA testing was performed. The DNA found on the tip of the screwdriver was nearly conclusive that it came from Sal. However, appellant was excluded as a contributor to the DNA found on the handle of the screwdriver.

Since each of the witnesses indicated that appellant was the assailant, the police began searching for him. His parents, with whom he lived, had not seen him since that afternoon. Appellant could not be located until, on October 5, 2015, appellant attempted to obtain admission into this country from Mexico. Appellant informed the Customs and Border Protection officer that he is an American citizen born in Amarillo, Texas, but that he did not have documents necessary to come into the United States. While the officer was attempting to process appellant's information, appellant said that he was going to be on the news because he had done something in Amarillo and that he had to pay for what he had done. About that time, the officer received a notification that appellant was wanted in Amarillo and that he was considered "armed and dangerous." As a result of this notification, appellant was taken into custody. While in custody, appellant said that he was at a party when a shooting occurred and he got scared and ran to Mexico because he knew that the police were looking for him.

Appellant was indicted for the murder of Sal Ramirez. He was tried before a jury. After hearing the evidence, the jury found appellant guilty of murder, and sentenced him to 65 years' incarceration in the Institutional Division of the Texas Department of Criminal Justice.

By one issue, appellant contends that the evidence presented at trial is insufficient to support the jury's verdict of guilt.

Law and Analysis

In assessing the sufficiency of the evidence, we review all 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 offense beyond a reasonable doubt. *Jackson v. Virginia*, 443 U.S. 307, 319, 99 S. Ct. 2781, 61 L. Ed. 2d 560 (1979); *Brooks v. State*, 323 S.W.3d 893, 912 (Tex. Crim. App. 2010). "[O]nly that evidence which is sufficient in character, weight, and amount to justify a factfinder in concluding that every element of the offense has been proven beyond a reasonable doubt is adequate to support a conviction." *Brooks*, 323 S.W.3d at 917 (Cochran, J., concurring). We remain mindful that "[t]here is no higher burden of proof in any trial, criminal or civil, and there is no higher standard of appellate review than the standard mandated by *Jackson*." *Id*. When reviewing all of the evidence under the *Jackson* standard of review, the ultimate question is whether the jury's finding of guilt was a rational finding. *See id*. at 906-07 n.26 (discussing Judge Cochran's dissenting opinion in *Watson v. State*, 204 S.W.3d 404, 448-50 (Tex. Crim. App. 2006), as outlining the proper application of a single evidentiary standard of review). "[T]he reviewing court is required to defer to the jury's credibility and weight determinations because the jury is the sole judge of the witnesses' credibility and the weight to be given their testimony." *Id*. at 899.

Appellant contends that the evidence is not sufficient to establish that he was the individual that murdered Sal. However, evidence was admitted that three witnesses placed appellant in the room with Sal at the time the assault occurred. Alex testified that she saw appellant stab Sal in the temple with a screwdriver. Further, Alex, Mark, Juan, and Desiarae Riojas testified that they saw appellant handling a screwdriver throughout the evening. Immediately following the assault, Alex, Mark, and Juan called 911 while appellant fled the scene. *Clayton v. State*, 253 S.W.3d 772, 780 (Tex. Crim. App. 2007) (flight from the scene of a crime is a circumstance from which an inference

of guilt can be drawn by the factfinder). It was subsequently discovered that, far more than simply fleeing the scene, appellant fled the country. After apparently hiding out in Mexico for eleven months, appellant was apprehended when he attempted to return to America without any identifying papers. Further, while speaking to the border officer, appellant confessed that he had done something in Amarillo for which he would have to pay. While appellant's explanation of why he left Amarillo did not exactly match the facts of this case, he indisputably confessed to fleeing Amarillo because the police were looking for him. We believe that this evidence is sufficient to allow a rational jury to conclude, beyond a reasonable doubt, that appellant murdered Sal. *See Jackson*, 443 U.S. at 319; *Brooks*, 323 S.W.3d at 912.

Appellant points to inconsistencies between the accounts of the witnesses as well as contradictions in the witnesses' stories at different times as evidence that their accounts are not reliable. In addition, appellant contends that the jury could not rationally conclude that he committed the murder since his DNA was not found on the handle of the screwdriver. Appellant also posits other explanations as to why he fled following the murder and cites statements he made to the border officer that are not consistent with Sal's murder. However, at best, these facts simply create a conflict in the evidence that should be resolved by the jury.

The jury's guilty verdict indicates that the jury rejected appellant's exculpatory explanation and analysis of the evidence. *Clayton*, 235 S.W.3d at 779; *see Matson v. State*, 819 S.W.2d 839, 843 (Tex. Crim. App. 1991) ("The factfinder, best positioned to consider all the evidence firsthand, viewing the valuable and significant demeanor and expression of the witnesses, has reached a verdict beyond a reasonable doubt. Such a

verdict must stand unless it is found to be irrational or unsupported by . . . the evidence, with such evidence being viewed under the *Jackson* light."). "When the record supports conflicting inferences, we presume that the factfinder resolved the conflicts in favor of the prosecution and[,] therefore[,] defer to that determination." *Clayton*, 235 S.W.3d at 778.

Conclusion

When all of the evidence is reviewed in the light most favorable to the verdict, we conclude that sufficient evidence was presented to the jury to allow it to determine that appellant was guilty of murder beyond a reasonable doubt. *See Jackson*, 443 U.S. at 319; *Brooks*, 323 S.W.3d at 912. As such, we overrule appellant's sole issue and affirm the judgment of the trial court.

Judy C. Parker
Justice

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