In The
Court of Appeals
Sixth Appellate District of Texas at Texarkana

No. 06-16-00186-CR

JAMES ARTHUR CRAWFORD, III, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the 8th District Court
Franklin County, Texas
Trial Court No. F-9107

Before Morriss, C.J., Moseley and Burgess, JJ.
Memorandum Opinion by Chief Justice Morriss

MEMORANDUM OPINION

Twice, in the few months before seventy-five-year-old Kenneth Rex Raley was found beaten to death in his Mount Vernon home, that home had been burglarized with the theft of firearms, electronic equipment, and power equipment.[1] Because Raley had been in poor health in recent years, his brother Calvin regularly had telephoned to check on Raley, but, on September 3, Calvin's calls had gone unanswered, prompting Calvin to enter the home. Calvin found Raley's bloody body wrapped in a piece of carpet amid a bloody scene suggesting that Raley's death had been brutal.

Subsequent investigations yielded numerous connections tending to incriminate James Arthur Crawford, III, in Raley's death. Crawford was charged with, and convicted of, capital murder, and the trial court sentenced him to the mandatory punishment of life imprisonment without parole.[2] On appeal, Crawford challenges the legal sufficiency of the evidence to prove the "required nexus between the homicide and the . . . burglary" and argues that the trial court's jury charge erroneously allowed the jury to convict Crawford as a party to the offense without requiring a finding that he acted with the intent to promote or assist in the commission of the capital murder. We affirm the trial court's judgment because (1) legally sufficient evidence supported the jury's finding that the murder occurred in the course of committing or attempting to commit burglary of a habitation and (2) no jury-charge error occurred.

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[1]According to Raley's brother, Calvin, thieves entered Raley's home in April 2014 and stole two shotguns, a rifle, a computer, and a television. In August, the month before Raley's death, a lawnmower, Poulan chainsaw, and another television were taken from the home.

[2]*See* TEX. PENAL CODE ANN. §§ 12.31(a)(2), 19.03(a)(2), (b) (West Supp. 2017).

(1) Legally Sufficient Evidence Supported the Jury's Finding that the Murder Occurred in the Course of Committing or Attempting to Commit Burglary of a Habitation

Crawford argues that, for want of evidence that Raley's killing was accomplished by Crawford to facilitate theft of Raley's property, the evidence of capital murder is legally insufficient.[3] We disagree, finding legally sufficient evidence of a nexus between the killing of Raley and the intended burglary of a habitation.

Crawford appropriately argues that a killing and an unrelated taking of property do not constitute capital murder under Section 19.03(a)(2) of the Texas Penal Code, but that the State must establish that the murder occurred in the course of the burglary of a habitation or an attempt to do so. *See Ibanez v. State*, 749 S.W.2d 804, 807 (Tex. Crim. App. 1986). Because the jury found Crawford guilty of capital murder, we must overrule this appellate issue if there is legally sufficient evidence supporting a finding that the murder was committed in the course of committing or attempting to commit burglary of a habitation. We find such evidence in this record.

When Calvin arrived at Raley's house to check on Raley, he immediately noticed that the door was open and that Raley's red Nissan truck was parked in an unusual position. Eventually, Calvin located Raley's bloodied body rolled in carpet and stuffed into a closet. Police officers were immediately dispatched to the scene.

Texas Ranger John Thomas Vance testified about the bloody scene and clues gathered during the examination of Raley's home. The high-velocity blood spatter evidence indicated that Raley was severely beaten with a long, thin object, later suggested to be Raley's own cane. Vance

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[3]Crawford does not challenge identity or otherwise argue that he did not kill Raley.

found several bloody footprints throughout the home, all containing a distinct "circular pattern with chevrons in the middle and then a smaller circle with the chevrons in the middle as well." Later, the footprints were matched to Crawford's shoes. Vance clarified that no shoeprints containing a different pattern were found at the bloody scene. Although Raley did not smoke, Vance also located a Newport cigarette butt in the bathroom sink's plumbing and collected it as evidence. Evidence indicated that the cigarette brand was a regular smoke for Crawford and his close friend Johnathen Owens.

Josh Daily, a Lieutenant with the Mount Vernon Police Department, and Robert Zinn, an investigator with the Franklin County Sheriff's Office, believed that someone had tampered with Raley's truck. In addition to being parked in an odd manner, the truck's driver's seat was leaning "way, way back," and loud rap music, which Raley did not listen to, played on the truck's radio when the vehicle was turned on.

Raley's metal cane was found lying behind a chair on the porch in a place where it would have been hard for Raley to reach, while the cane's rubber cap was lying on the ground inside the home. Dr. Stephen Hastings, the medical examiner who performed Raley's autopsy, concluded that Raley's death was a result of multiple blunt force injuries and neck compression. He informed the jury that lineal hemorrhaging patterns found on Raley's body demonstrated that Raley had been beaten by a long object like a cane.

Daily testified that Raley's credit card was used to pay on a StraightTalk prepaid cell phone account associated with Crawford. Daily also obtained Raley's cell phone records and discovered that Raley's phone was used after his death, first to call Crawford's StraightTalk cell phone, then

to call Crawford's mother, cousins, girlfriend, and father. A Facebook search connected Raley's cellular telephone number to Crawford's Facebook account.

A tip from Alvin Hatcher, Jr., connected a lawnmower purchased by Hatcher from Crawford to the August theft from Raley's home. Hatcher identified Crawford as the man who had sold the stolen lawnmower to him through a local lawn care specialist, Danny Shirley. Shirley testified that Crawford drove the lawnmower to his yard, identified himself as James Carver, and asked if he knew anyone who would like to purchase it. Shirley contacted Hatcher, who indicated his interest in purchasing the lawnmower, and prepared a bill of sale for the lawnmower between Hatcher and "James Carver" dated August 14, 2014. According to Shirley, Crawford stated that he did not have his identification card and asked that Hatcher pay for the item by a check made out to Crawford's friend Owens, who was waiting in a truck parked near Shirley's yard, so that Owens could cash the check and give the money to Crawford. Hatcher complied, and the transaction was complete. Tracing of the check revealed that it was cashed by Owens' then girlfriend, Tricia Rash.

Daily also discovered that a Poulan chainsaw with the same serial number as the one stolen from Raley's home in April had been pawned by Owens. Calvin testified that a Craftsman chainsaw belonging to Raley, which he opined must have been stolen on the day of the murder, was also pawned by Owens at a local pawnshop. Calvin added that he had found Raley's wallet on a shelf Raley would have been unable to reach and that it was empty of cash. As a result of locating the lawnmower and chainsaw, Zinn interviewed Owens and Rash and obtained a voluntary sample of Owens' DNA.

At trial, Owens testified that he initially denied knowing Crawford[4] because of his involvement with the stolen items,[5] but later confessed that he and Crawford were friends. Before the murder, Crawford told Owens that he was going to rob a house on Raley's street. Owens, who denied any involvement in the murder, testified that Crawford stopped by his house in a red truck on September 2 and claimed that the truck belonged to his uncle. After throwing a pair of gloves over Owens' fence, Crawford left.[6]

A video surveillance system at a local convenience store recorded Crawford driving Raley's truck on the night of the murder. Crawford was wearing a blue basketball jersey, camouflage shorts, Jordan-brand socks, and Jordan-brand tennis shoes. An employee of the convenience store working that evening, Stardom Nicole Williams Irving, testified that Crawford appeared distraught, sweaty, and flustered when he entered the store. Irving said she could hear Crawford running water in the bathroom and fulfilled Crawford's request for additional paper towels. Irving clarified that Crawford was alone.

Owens testified that, on or after 9:00 p.m. on the night of the murder, Crawford asked Owens if he could spend the night at Owens' house because he had gotten into a fight with his girlfriend. According to Owens, Crawford appeared flustered, hot, and sweaty when he arrived, and made the statement that he had "f'ed up." Owens testified that they smoked Newport cigarettes together and that Crawford eventually stated that he had killed someone. Instead of calling the

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[4]Owens was charged with hindering apprehension of a felon.

[5]In addition to the transaction involving the lawnmower and chainsaw, Owens admitted that he helped Crawford sell three guns and a television, even though he knew they were stolen.

[6]Zinn later recovered these gloves.

police, Owens invited Crawford back into his house, in which Rash and his two-year-old son were sleeping, to spend the night. The following day, he assisted Crawford in pawning a chainsaw.

Rash testified that Crawford sometimes spent the night with them, because he was Owens' friend. Although she did not see Crawford on the night of September 2, Rash testified that Crawford's girlfriend, Patricia McCoy, sent Rash a text message stating that McCoy was confused, needed clarity, and wanted to talk to her. Rash called McCoy. According to Rash, McCoy informed her of the murder investigation.

Police officers came to search McCoy's residence in an attempt to locate Crawford, who was living there at the time. McCoy testified that she had had an argument with Crawford September 2 and that Crawford had decided to stay the night with Owens and Rash. McCoy claimed that she received a call from Raley's cell phone that evening, but that Owens was on the other line asking for Crawford. She picked Crawford up from Owens' home on September 3. A few days later, police called McCoy to notify her that they were on their way to speak with her about an ongoing investigation. When she relayed this information to Crawford, Crawford fled the house on foot, even though he was not wearing any shoes. Officers arrived at McCoy's home and collected Crawford's Jordan-brand tennis shoes. The following day, McCoy found a wad of Crawford's clothing in her car and, after noticing blood on them, turned them over to Zinn.

Vance testified that he noticed blood on Crawford's shoes and submitted them to the crime laboratory for testing. John Witkowski, a forensic scientist in the trace evidence section of the crime laboratory, conducted shoeprint comparisons using Crawford's Jordan-brand shoes and carpet squares of the bloody shoeprints found at the scene of Raley's murder. Witkowski testified

that the “partial shoe impression on the carpet [wa]s similar in size, shape, and tread design to the right shoe that was collected from McCoy’s residence.”

Melissa Haas, the DNA section supervisor at the crime laboratory, testified that DNA analysis from the blood specimen collected from the bottom of Crawford’s left shoe contained a DNA mixture from three individuals and that “[o]btaining this mixture profile is 376 octillion times more likely” if the DNA came from Raley, Crawford, and an unknown individual than if the DNA came from three unknown individuals. Hass testified that the DNA analysis of the blood specimen collected from the bottom of Crawford’s right shoe revealed a single, individual profile and that it was “986 quadrillion times more likely” to obtain the result of the analysis if the DNA came from Raley as opposed to an unknown individual. The jury was able to view photographs of the bloody footprints that were taken at Riley’s home and compare the distinct pattern in those footprints to Crawford’s shoes.

Regarding the cigarette butt from the crime scene, Hass testified, “The DNA profile was interpreted as a mixture of two individuals. Obtaining this mixture profile is 47.6 quintillion times more likely if the DNA came from . . . Crawford . . . and an unknown individual than if the DNA came from two unrelated, unknown individuals.” Hass also stated that the shorts recovered from McCoy’s car had blood on them and that testing revealed it was “1.16 quintillion times more likely if the DNA came from Kenneth Raley.” Similar results came from the blood found on Crawford’s Jordan-brand socks. Haas clarified that Owens was excluded as a source of DNA on all of the tested samples.

After Crawford's arrest, he admitted to stealing Raley's truck. After hearing the evidence, the jury convicted Crawford of capital murder. We are to examine the evidence to determine if legally sufficient evidence supports a finding that Crawford's killing of Raley happened while Crawford committed or attempted burglary of Raley's habitation.

In evaluating legal sufficiency of the evidence, we review all the evidence in the light most favorable to the trial court's judgment to determine whether any rational jury could have found the essential elements of the offense beyond a reasonable doubt. *Brooks v. State*, 323 S.W.3d 893, 912 (Tex. Crim. App. 2010) (plurality op.) (citing *Jackson v. Virginia*, 443 U.S. 307, 319 (1979)); *Hartsfield v. State*, 305 S.W.3d 859, 863 (Tex. App.—Texarkana 2010, pet. ref'd). We examine the evidence under the direction of the *Brooks* opinion, while giving deference to the responsibility of the jury "to fairly resolve conflicts in testimony, to weigh the evidence, and to draw reasonable inferences from basic facts to ultimate facts." *Hooper v. State*, 214 S.W.3d 9, 13 (Tex. Crim. App. 2007) (citing *Jackson*, 443 U.S. at 318–19); *Clayton v. State*, 235 S.W.3d 772, 778 (Tex. Crim. App. 2007).

Legal sufficiency of the evidence is measured by the elements of the offense as defined by a hypothetically correct jury charge. *Malik v. State*, 953 S.W.2d 234, 240 (Tex. Crim. App. 1997). The "hypothetically correct" jury 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 unnecessarily restrict the State's theories of liability, and adequately describes the particular offense for which the defendant was tried." *Id*.

"Texas Penal Code Section 19.03(a)(2) provides that a person commits capital murder if the person commits murder, as defined under section 19.02(b)(1). . . , and the person intentionally commits the murder in the course of committing or attempting to commit a specified offense," in this case, burglary. *Griffin*, 491 S.W.3d 771, 774 (Tex. Crim. App. 2016). A person commits burglary "if, without the effective consent of the owner, the person: (1) enters a habitation . . . with intent to commit . . . theft." TEX. PENAL CODE ANN. § 30.02(a)(1) (West Supp. 2017). Intent can be inferred from the acts, words, and conduct of the defendant. *Patrick v. State*, 906 S.W.2d 481, 487 (Tex. Crim. App. 1995).

Here, the State's indictment, configured from Section 19.03(a)(2) of the Texas Penal Code, alleged that

> James Arthur Crawford, III, on or about the 2nd day of September 2014, . . . did then and there intentionally cause the death of an individual, namely KENNETH REX RALEY, by striking KENNETH REX RALEY with a cane, by compressing KENNETH REX RALEY'S neck with a cane, by striking KENNETH REX RALEY with an object unknown to the grand jury and by compressing KENNETH REX RALEY's neck by an object unknown to the grand jury and the defendant was then an there in the course of committing or attempting to commit the offense of burglary of the habitation of KENNETH REX RALEY.

As explained by the Texas Court of Criminal Appeals, "[A] felony that is committed as an afterthought and unrelated to the murder is not sufficient to prove capital murder under Section 19.03(a)(2)." *Griffin*, 491 S.W.3d at 776.

The jury heard ample evidence that Crawford was involved in the April and August burglaries of Raley's residence. Crawford told Owens before Raley's death that Crawford was going to "hit a lick," or rob someone, on Raley's street. From the evidence presented, the jury could have rationally determined that Crawford entered Raley's home with the intent to commit

theft and that he murdered Raley in the course of committing or attempting to commit burglary after finding Raley in the home. The evidence showing that Crawford used Raley's credit cards and stole his Craftsman chainsaw, truck, and cell phone, further supported the jury's finding.

The evidence is legally sufficient to support the jury's implicit finding that the burglary was not an afterthought of Raley's murder. Accordingly, the necessary nexus between Raley's murder and the burglary was proven by legally sufficient evidence. We overrule this point of error.

(2) No Jury-Charge Error Occurred

Crawford also argues that the jury charge was erroneous in allowing his conviction of capital murder if Crawford aided just the robbery or burglary offense without intending Raley's death. He claims that "the resulting jury charge left the impression that capital murder could be established, under the law of parties, if [Crawford] promoted any 'offense' without specifying which offense . . . was knowingly and willfully promoted." We disagree. By our reading, the full instruction, understood in context and not excerpting isolated phrases, clearly instructed the jury that the offense Crawford must have intended to promote or assist, if he was to be found guilty as a party, was the murder of Raley, not the robbery or burglary.

"[T]he jury is the exclusive judge of the facts, but it is bound to receive the law from the court and be governed thereby." TEX. CODE CRIM. PROC. ANN. art. 36.13 (West 2007). "A trial court must submit a charge setting forth the 'law applicable to the case.'" *Lee v. State*, 415 S.W.3d 915, 917 (Tex. App.—Texarkana 2013, pet. ref'd) (quoting TEX. CODE CRIM. PROC. ANN. art. 36.14 (West 2007)). "The purpose of the jury charge . . . is to inform the jury of the applicable law and guide them in its application. It is not the function of the charge merely to avoid misleading

or confusing the jury: it is the function of the charge to lead and prevent confusion." *Id*. (quoting *Delgado v. State*, 235 S.W.3d 244, 249 (Tex. Crim. App. 2007)).

We employ a two-step process in our review of alleged jury charge error. *See Abdnor v. State*, 871 S.W.2d 726, 731 (Tex. Crim. App. 1994). "Initially, we determine whether error occurred and then evaluate whether sufficient harm resulted from the error to require reversal." *Wilson v. State*, 391 S.W.3d 131, 138 (Tex. App.—Texarkana 2012, no pet.) (citing *Abdnor*, 871 S.W.2d at 731–32).

At trial, Crawford argued that Owens was "the brains of this operation" and that Crawford was not guilty of capital murder, only of some lesser-included offense. He pointed to inconsistencies in Owens' statements to the police, the failure of police to collect any of Owens' shoes[7] or clothing, McCoy's testimony of Crawford's passive nature, Owens' past involvement in the April and August burglaries, and Crawford's size,[8] which arguably suggested Crawford may not have been able to drag Raley's body and stuff it in the closet on his own.

The jury instructions allowed the jury to convict Crawford either as a primary actor or as a party to the offense.[9] The application paragraph stated,

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[7]Owens' shoe size was considerably smaller than Crawford's shoe size.

[8]Crawford was six feet two inches tall and weighed 175 pounds.

[9]The law of the parties instruction provided:

> **Responsibility for Conduct of Another as Party**
>
> A person who does not by his own conduct commit an offense may nonetheless be criminally responsible for the conduct of another person.

In deciding the defendant's guilt or innocence however, you should first address whether the state has proved the charged offense of capital murder. . . .

To find the defendant guilty of [capital[10]] murder, you must determine whether the state has proved, beyond a reasonable doubt, three elements. The elements are that —

1. the defendant — either acting alone, as a party to the offense, or as a coconspirator with another person as described above on pages 4 to 6 – in Franklin County, Texas, on or about September 2, 2014, caused the death of Kenneth Rex Raley by —

   a. striking Kenneth Rex Raley about the head and/or neck with a cane and/or unknown object, a deadly weapon; or

   b. compressing the neck of Kenneth Rex Raley with a cane and/or unknown object, a deadly weapon; and

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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.

To prove that the defendant is guilty of the offense of capital murder committed by the conduct of another, the state must prove, beyond a reasonable doubt, that—

1. the other person committed the offense;

2. the defendant aided or attempted to aid the other person to commit the offense; and

3. the defendant acted with the intent to promote or assist in the commission of the offense by the other person.

A defendant acts with intent to promote or assist in the commission of an offense when it is his conscious objective or desire to promote or assist in the commission of the offense.

A defendant's mere presence alone will not make him responsible for an offense. A defendant's mere knowledge of a crime or failure to disclose a crime is not sufficient.

A defendant is guilty of an offense committed by another under the law set out here even if that other person has been acquitted, has not been prosecuted or convicted, has been convicted of a different offense or of a different type or class of offense, or is immune from prosecution.

[10] The trial court's charge contained another application paragraph for "straight murder" and "felony murder" in the event that the jury determined Crawford was not guilty of capital murder.

2. the defendant did this intentionally; and

3. the defendant was at the time of the death committing or attempting to commit the offense of —

    a. burglary of a habitation; or
    b. robbery.

At the charge conference, Crawford expressed his concern that the application paragraph should be amended so that the jury could not determine that Crawford was guilty of capital murder simply for aiding in the offense of burglary. In other words, Crawford wanted the trial court to clarify that the mens rea in the application paragraph, that "the defendant did this intentionally," required the jury to find that the defendant murdered Raley intentionally.

After reviewing the language of the trial court's charge, we disagree with Crawford's assertion. The application paragraph informed the jury that there were three elements they were required to find before they could conclude that Crawford was guilty of capital murder. When the first two elements of the offense, as stated in the application paragraph, are read together, the jury had to find that Crawford "either acting alone, [or] as a party to the offense[,] . . . caused the death of Raley" and "did this intentionally." While it would have been better practice for the charge to have read "either acting alone, or as a party to the offense *of murder*," we cannot say that the trial court's charge was erroneous because it did not permit the jury to convict Crawford unless it determined that he intended Raley's death.

Finding no error in the trial court's charge, we overrule this point of error.

We affirm the trial court's judgment.

Josh R. Morriss, III
Chief Justice

Date Submitted: April 5, 2017
Date Decided: May 31, 2017

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