

TEXAS COURT OF APPEALS, THIRD DISTRICT, AT AUSTIN

NO. 03-15-00536-CR

Edward Stuart, Appellant

v.

The State of Texas, Appellee

**FROM THE DISTRICT COURT OF COMAL COUNTY, 207TH JUDICIAL DISTRICT
NO. CR2014-084, HONORABLE JACK H. ROBISON, JUDGE PRESIDING**

MEMORANDUM OPINION

A jury convicted appellant Edward Stuart of aggravated assault with a deadly weapon and tampering with physical evidence. *See* Tex. Penal Code §§ 22.02(a)(2), 37.09. The district court assessed his punishment, enhanced by a prior felony conviction, at ninety-nine years' imprisonment for the aggravated assault and twenty years' imprisonment for the tampering with physical evidence. Stuart appeals only his conviction for tampering with physical evidence, contending that the evidence at trial was legally insufficient to support his conviction. We will affirm the judgment.

BACKGROUND

Stuart was charged by indictment with aggravated assault with a deadly weapon and tampering with physical evidence after stabbing a man with a knife and subsequently placing the knife beneath a storage box in the bedroom of Stuart's apartment. At trial, the jury heard testimony from Stuart, his wife Kelli Mantel, the victim Rick Tellez, and his fiancée Julie Cortelyou. The jury

also heard testimony from law enforcement officers who investigated the stabbing, including New Braunfels Police Department Detective Richard Groff.

Mantel testified that on the night of the offense, Stuart took knives from the wall during an argument and “started coming at” her and Tellez, swinging the knives around. Tellez testified that as he turned to his right, Stuart “was plunging a three-foot knife into [his] chest,” just below his heart. Stuart testified that he “bolted” after the stabbing, running to railroad tracks behind the apartment building. Cortelyou testified that numerous knives were displayed in the living room of Stuart’s apartment. Photographs of knives hanging on a wall of the living room were admitted into evidence.

Detective Groff testified that after he arrived at the scene, he asked Mantel for permission to search the apartment, and she consented. Detective Groff testified that he took photographs of what he saw outside and inside of Stuart’s apartment. Out of an abundance of caution and because he had not obtained consent to search from Stuart, Detective Groff stated that he restricted his search to common areas of the apartment and did not search the bedroom. However, Detective Groff stated that he took photographs, including one showing a gray box¹ with its bottom flat on the carpet of the bedroom. Detective Groff testified that police officers did not remain at the scene after he had conducted his initial search. No one else was at the apartment because Stuart fled, Tellez was flown to a hospital, and Mantel and Cortelyou went to the police station for interviews.

¹ These photographs show plastic storage containers without lids sitting on the carpet of the bedroom, including a gray container that was referred to at trial as a “box,” a “crate,” and a “tub.”

Mantel testified that after she and Cortelyou had been to the police station, they got a hotel room because they were not allowed to return to the apartment.

Detective Groff testified that he returned to the apartment the next day to continue his investigation after he obtained a warrant. He took more photographs of the scene, which were later admitted into evidence. Detective Groff testified that the distance between the boxes in the bedroom was different than it had been on the prior day. The gray one appeared to have been moved, and certain items that were not on the bed during the initial investigation, including a phone, wallet, keys, and pen, were now on top of the bed. Detective Groff further testified that he lifted the gray box from the carpet and discovered two knives, one with discoloration on its blade. Detective Groff stated that swabs from the blood on the blade were sent to a lab that matched the blood to Tellez's DNA.

Detective Groff spoke with Stuart within hours of the stabbing, during a telephone interview encouraging Stuart to turn himself in, and later, at the police station. In those recorded interviews that were played for the jury, Stuart stated, "If I was sober, this never would've happened," "I'm going to have to deal with the fact I hurt somebody," "I'm going to do some time," and "I'm going to end up with a record here in Texas." He told Detective Groff that he returned to the apartment when nobody was there but that he did not touch anything. He stated that he left his wallet, some credit cards, and his phone in the apartment. He also stated his expectation that "[y]ou guys are going to search the house anyway." When Detective Groff informed Stuart that he had officers looking for the knives Stuart had hidden, and that hopefully a child did not find them first, Stuart did not deny hiding the knives or say that he had left them in the apartment.

At trial, Stuart provided a version of events that he never told his wife or the police. He testified that after he got into an argument with Cortelyou, he left the apartment and went to some railroad tracks behind the building. He stated that he returned to the apartment and got into an argument with Tellez. Stuart testified that he grabbed a knife from the wall, and that Tellez “ran right into” the knife that Stuart was pointing at him. He testified that he could not remember whether he took that knife with him into the bedroom, but that he “could have taken it back there.” Afterward, Stuart stated that he ran to outside to the railroad tracks and fell asleep. Stuart testified that he returned to the apartment after receiving Detective Groff’s phone call. Stuart acknowledged that while he was there, he may have touched the tubs in his bedroom when he was moving things around looking for a jacket. He testified that he was not sure whether he placed the knife, which he might have taken to the bedroom, under a crate in the bedroom, but that “it could have been near it.” He testified that it was “probably” possible that the gray tub had been put over the knives. Stuart further testified that he “was trying to make sure that everything could be found if it has to be found by a policeman.”

At the conclusion of trial, the jury convicted Stuart of aggravated assault with a deadly weapon and tampering with physical evidence, and the court assessed punishment. This appeal followed.

DISCUSSION

Sufficient evidence supported Stuart’s conviction

The jury charge submitted two theories of liability, alleging that Stuart committed an act of tampering either (1) knowing that an investigation was pending or in progress, or (2) knowing

that an offense had been committed. *See* Tex. Penal Code § 37.09(a)(1), (d)(1). The jury returned a general verdict finding Stuart guilty of the tampering offense.

Stuart contends that the evidence at trial was insufficient to support his conviction for tampering with physical evidence. Under the legal-sufficiency standard, we 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 crime beyond a reasonable doubt.” *Jackson v. Virginia*, 443 U.S. 307, 319 (1979); *Brooks v. State*, 323 S.W.3d 893, 899 (Tex. Crim. App. 2010). We may not substitute our judgment for that of the jury by reevaluating the weight or credibility of the evidence, but must defer to the jury’s resolution of conflicts in the evidence, weighing of the testimony, and drawing of reasonable inferences from basic facts to ultimate facts. *Isassi v. State*, 330 S.W.3d 633, 638 (Tex. Crim. App. 2010). We apply the same standard to direct and circumstantial evidence. *Id.* Circumstantial evidence is as probative as direct evidence in establishing the guilt of a defendant, and circumstantial evidence alone can be sufficient to establish guilt. *Hooper v. State*, 214 S.W.3d 9, 13 (Tex. Crim. App. 2007). Each fact need not point directly and independently to the defendant’s guilt, as long as the cumulative force of all the incriminating circumstances is sufficient to support the conviction. *Id.*

Conviction for tampering with physical evidence requires proof that a person (1) alters, destroys, or conceals any record, document, or thing; (2) intends to impair its verity, legibility, or availability as evidence in the investigation or official proceeding; and that the person does so (3) knowing that an investigation or official proceeding is pending or in progress, or knowing that an offense has been committed. Tex. Penal Code § 37.09(a)(1), (d)(1); *see Pizzo*

v. State, No. 03-14-00701-CR, 2017 Tex. App. LEXIS 2056, at *15-19 (Tex. App.—Austin Mar. 10, 2017, no pet.) (mem. op., not designated for publication). The tampering statute requires the actor to have both an intent to “alter, destroy, or conceal” and an intent to impair the availability of the evidence. *Rabb v. State*, 483 S.W.3d 16, 21 (Tex. Crim. App. 2016) (citing *Thornton v. State*, 425 S.W.3d 289, 301 n.59 (Tex. Crim. App. 2014), and noting that although statute does not seem to require intent to conceal evidence, statute’s phrasing requires “that the actor have a concomitant intent to alter, destroy, or conceal because ‘an actor could not harbor an intent to impair the availability of the evidence, carry out that intent by means of concealment, and yet not have had a “conscious objective” to conceal the evidence’”).

Stuart contends that there is no evidence of his specific intent to conceal any knife or to impair its verity or availability as evidence because, in his view, he put the knives where police could find them. Alternatively, he contends that if moving the knives under the tub would allow the jury to infer “some intention,” the concealment was unsuccessful and requires consideration of whether the judgment should be reformed to reflect only an “attempted” tampering conviction.

It was the jury’s responsibility to weigh and resolve any conflicts in the evidence and to draw reasonable inferences from basic facts to ultimate facts. *See Isassi*, 330 S.W.3d at 638. Here, the jury could have found Stuart’s testimony that he only touched the tubs in his bedroom while looking for a jacket, that he was not sure whether he placed the knife that he used under a crate in the bedroom, and that he “was trying to make sure that everything could be found if it has to be found by a policeman” not credible. *See Clayton v. State*, 235 S.W.3d 772, 779 (Tex. Crim. App. 2007)

(noting that jury had two conflicting theories—State’s and defendant’s—and “most importantly, the jury was able to assess [defendant]’s credibility and demeanor” during testimony).

Further, the jury could have inferred from the evidence that Stuart intended to conceal the knives and to impair their availability as evidence in the investigation. “Conceal” means “the act of removing from sight or notice; hiding.” *Gaitan v. State*, 393 S.W.3d 400, 401 (Tex. App.—Amarillo 2012, pet. ref’d); *Rotenberry v. State*, 245 S.W.3d 583, 588-89 (Tex. App.—Fort Worth 2007, pet. ref’d). Although numerous knives were openly displayed in the living room of Stuart’s apartment, police found the knife that was used in Tellez’s stabbing, along with another knife, beneath a gray box in the midst of clutter in Stuart’s bedroom. Photographs taken during the initial and follow-up investigations show the changed position of the box, from sitting with its bottom flat against the carpet to being slightly raised from the carpet. Photographs also show certain items, but not the knives, were left in plain view on the bed, including Stuart’s phone, keys, and wallet. Stuart was the only person aside from crime-scene investigators who entered his apartment in the hours after the stabbing. He told police that when he returned to the apartment nobody was there and that he did not touch anything. After Detective Groff informed Stuart that officers were looking for the knives Stuart had hidden, Stuart did not deny hiding them or say that he had left them in the apartment to make sure that police would find them. Rather, the knives had been “remov[ed] from sight or notice” because police were unable to see the knives until they lifted the box covering them. *See Gaitan*, 393 S.W.3d at 401; *Rotenberry*, 245 S.W.3d at 588-89.

Stuart contends that even if the evidence allowed the jury “to infer some intention,” his judgment should be reformed to reflect only an “attempted” tampering conviction, as in *Rabb* and

Thornton, because he was ultimately unsuccessful in concealing the knives. *Cf. Rabb*, 483 S.W.3d at 24; *Thornton*, 425 S.W.3d at 307. However, those cases do not support the proposition that a tampering charge cannot stand if police discover evidence that a defendant has concealed. In both of those cases, unlike here, the defendants failed to conceal anything because police officers saw the items before defendants began trying to hide them. *See Rabb*, 483 S.W.3d at 17 (defendant put plastic baggie in his mouth after police investigators noticed him pull baggie out of his pocket); *Thornton*, 425 S.W.3d at 293 (police officer never lost sight of object that defendant removed from his pocket and dropped onto sidewalk). Stuart's reliance on those cases, given their distinct circumstances, is misplaced. *Cf. Gaitan*, 393 S.W.3d at 402 (concluding that sufficient evidence supported defendant's conviction for tampering with physical evidence and noting "[t]hat his effort was ultimately unsuccessful matters little; the factfinder had before it some evidence from which it could legitimately deduce that [defendant] was 'hiding' what he had from the officers called to investigate the disturbance").

Stuart provided scant briefing as to the remaining element of the tampering offense, i.e., whether he committed an act of tampering knowing that an investigation or official proceeding was pending or in progress, or knowing that an offense had been committed. However, we conclude that the jury had sufficient evidence to support either of those findings. *See Anderson v. State*, 416 S.W.3d 884, 889 (Tex. Crim. App. 2013) (noting that when charge authorizes jury to convict defendant on more than one theory, jury's verdict of guilt will be upheld if evidence is sufficient on any theory authorized by charge); *see also Thurston v. State*, 465 S.W.3d 255, 257 (Tex. Crim. App. 2015) (Keller, P.J., concurring) (concluding that when, as here, alternative methods of

committing offense of evidence tampering are submitted to jury and jury delivers general verdict, verdict is upheld if there is sufficient evidence supporting one theory of tampering that was submitted to jury).

In a recorded interview with Detective Groff after the stabbing but before the knives were discovered, Stuart acknowledged that an offense had been committed by stating, “I’m going to do some time,” and “I’m going to end up with a record here in Texas.” Stuart also understood that an investigation was underway after the stabbing but before he returned to the apartment when Detective Groff called him, stated that he had already been inside Stuart’s apartment, and discussed Stuart turning himself in. Additionally, after Stuart arrived at the police station, he stated his expectation that the police would search his apartment as part of their ongoing investigation: “You guys are going to search the house anyway.”

The evidence at trial, viewed in the light most favorable to the verdict, was sufficient to allow a rational jury to find beyond a reasonable doubt that Stuart committed the offense of tampering with physical evidence by intentionally concealing the knife he had used in stabbing Tellez and intending to impair its availability as evidence in the ongoing investigation. *See Brooks*, 323 S.W.3d at 899. Accordingly, we overrule Stuart’s complaint about the sufficiency of the evidence supporting his conviction.

CONCLUSION

We affirm the judgment of conviction.

Jeff Rose, Chief Justice

Before Chief Justice Rose, Justices Goodwin and Bourland

Affirmed

Filed: June 7, 2017

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