



NUMBER 13-15-00248-CR

COURT OF APPEALS

THIRTEENTH DISTRICT OF TEXAS

CORPUS CHRISTI – EDINBURG

JOHNNY JUAREZ,

Appellant,

v.

THE STATE OF TEXAS,

Appellee.

On appeal from the 94th District Court of
Nueces County, Texas.

MEMORANDUM OPINION

Before Justices Rodriguez, Benavides and Longoria
Memorandum Opinion by Justice Longoria

Appellant, Johnny Juarez, was convicted of one count of manslaughter with a deadly-weapon finding, a second-degree felony. See TEX. PENAL CODE ANN. § 19.04 (West, Westlaw through 2015 R.S.). Appellant received a sentence of twenty-five years' confinement in the Texas Department of Criminal Justice—Institutional Division.¹ By two

¹ Appellant's conviction was enhanced to a first-degree felony because he pleaded "true" to the

issues, appellant contends that (1) the evidence is insufficient to show that he caused the victim's death, and (2) the accomplice witness testimony was not sufficiently corroborated by other evidence to permit a finding that appellant committed the alleged offense.² We affirm.

I. BACKGROUND

Evidence was presented that Victor Joseph, the victim in this case, suffered from a genetic condition that caused him to be in a hypercoagulable state in which he could spontaneously form blood clots anywhere in his body, including in his lungs. In 2009, Joseph was admitted to a hospital with deep venous thrombosis and bilateral pulmonary embolism. Sheil Patel, D.O. prescribed blood thinning medication and instructed Joseph to continue taking the medication for life.

On March 14, 2010, Joseph attended a party at the home of Eric Luna. Rosanna Juarez, appellant's wife, testified that she and Luna argued at the party and that she left walking. According to Rosanna, appellant eventually picked her up, asked her to point out the house where the argument occurred, and then fired several gunshots at the house. Joseph was shot in the head, arm, and leg. Joseph did not die immediately, and after having surgery on March 14 and receiving treatment for a week at the hospital for the

allegation that he had been previously convicted of one felony offense. See TEX. PENAL CODE ANN. § 12.42(b) (West, Westlaw through 2015 R.S.).

² Although appellant sets out eight issues in his issues presented section of the brief, he only briefs two issues: one concerning causation and the second concerning accomplice-witness testimony. Appellant, however, notes the following:

Appellant has noted several sub[-]issues regarding the evidence of causation. Each sub[-]issue present is another method of analyzing the sufficiency of the evidence under current case law and standards developed in this State under *Jackson*. As a result, the sub-issues will each be discussed in turn under this broader issue regarding whether the evidence was sufficient to show beyond a reasonable doubt that [appellant] committed manslaughter.

gunshot wounds, he was released with a filter in the inferior vena cava of his heart. According to his wife and friends, Joseph was fine after he was released from the hospital, and he continued with his activities. On April 10, 2010, Joseph collapsed and was taken to the hospital. His doctor gave him blood thinners. However, Joseph then died.

Rey Fernandez, M.D., the medical examiner, performed an autopsy and determined that the cause of Joseph's death was bilateral pulmonary embolism, which Dr. Fernandez believed arose from the gunshot wound on his leg. Under cross-examination, Dr. Fernandez testified that there is no way to determine the source of the embolism. Joseph's doctors, Alexander Akin, M.D. and Dr. Patel both agreed that the source of the embolism was unknown.

Rosanna and appellant both tested positive for gun residue, and they were both indicted on March 14, 2013 for Joseph's murder and for aggravated assault on Daniel Garcia, a guest at the party, and Luna. On April 20, 2015, the trial court granted appellant's motion to strike the indictment concerning the aggravated assault charges.

The jury found appellant guilty of manslaughter with a deadly weapon finding, and the trial court sentenced him to twenty-five years' incarceration due to appellant's plea of true to an enhancement paragraph. This appeal followed.

II. CAUSATION

By his first issue, appellant contends that the evidence is insufficient to support his conviction of manslaughter because the evidence showed a concurrent cause that standing alone was sufficient to cause Joseph's death and that appellant's conduct standing alone was insufficient to cause the death. Specifically, appellant points to evidence that (1) Joseph died of a pulmonary embolism, (2) all of the experts agreed that clots in his legs did not cause him to stop breathing, and (3) clots in his lungs caused his

death. Next, appellant argues that Dr. Fernandez’s opinion “boils down to the fact that he says so” and that in a civil case, this testimony would be utterly rejected for failing to negate or reduce the probability of other possible causes and failing to show actual causal nexus versus mere theoretical one.” Appellant states, “[Dr. Fernandez’s] testimony boiled down to the fact that he thinks it was the cause, even though he has absolutely no way to prove why it is even the likeliest mechanism by which the embolism occurred.”³

A. Standard of Review

In a sufficiency review, we examine the evidence in the light most favorable to the prosecution to determine whether any rational fact finder could have found the essential elements of the crime beyond a reasonable doubt. *Jackson v. Virginia*, 443 U.S. 307, 319 (1979); see *Brooks v. State*, 323 S.W.3d 893, 898–99 (Tex. Crim. App. 2010) (plurality opinion). The fact finder is the exclusive judge of the facts, the credibility of witnesses, and of the weight to be given their testimony. *Brooks*, 323 S.W.3d at 899. We must resolve any evidentiary inconsistencies in favor of the judgment. *Id.* We measure the legal sufficiency of the evidence by the elements of the offense as defined by a hypothetically correct jury charge. *Coleman v. State*, 131 S.W.3d 303, 314 (Tex. App.—Corpus Christi 2004, pet. ref’d) (citing *Malik v. State*, 953 S.W.2d 234, 240 (Tex. Crim. App. 1997)).

A person is criminally responsible for the result if it would not have occurred but for that person’s conduct, “operating either alone or concurrently with another cause,

³ Finally, appellant asks this Court to provide “an articulable standard regarding level of probability an expert must testify to establish causation in a case in which lay persons can’t possibly make such a determination without expert guidance.” Appellant argues that it was impossible for the jury to make an informed decision regarding medical causation without expert testimony that required some level of probabilities.

unless the concurrent cause was clearly sufficient to produce the result and the conduct of the actor is clearly insufficient.” TEX. PENAL CODE ANN. § 6.04(a). To show that appellant caused Joseph’s death, the State had to prove either that (1) appellant’s conduct alone was sufficient to have caused Joseph’s death, or (2) appellant’s conduct along with the other cause, which included Joseph’s genetic medical condition, were sufficient to have caused his death together. *Robbins v. State*, 717 S.W.2d 348, 351 (Tex. Crim. App. 1986).

In our sufficiency review, “direct evidence of the elements of the offense is not required.” *Hooper v. State*, 214 S.W.3d 9, 15 (Tex. Crim. App. 2007). Circumstantial evidence is as probative as direct evidence, and juries are permitted to make reasonable inferences from the evidence presented at trial and in establishing the defendant’s guilt. *Id.* “Circumstantial evidence alone can be sufficient to establish guilt.” *Id.* “[T]he lack of direct evidence is not dispositive of the issue of a defendant’s guilt.” *Guevara*, 152 S.W.3d at 49. “Each fact need not point directly and independently to the guilt of the appellant, as long as the cumulative force of all the incriminating circumstances is sufficient to support the conviction.” *Thomas v. State*, 444 S.W.3d 4, 8 (Tex. Crim. App. 2014); *Winfrey v. State*, 393 S.W.3d 763, 768 (Tex. Crim. App. 2013); *Ethridge v. State*, 795 S.W.2d 281, 284–85 (Tex. App.—Houston 1990) *pet. dismiss’d*, 812 S.W.2d 600 (Tex. Crim. App. 1990) (en banc).

B. Discussion

In his report, admitted into evidence at appellant’s trial, Dr. Fernandez listed Joseph’s cause of death as follows: “Pulmonary embolism [d]ue to: Deep venous thrombosis, right lower leg [d]ue to: Gunshot wound, right lower leg.” Dr. Fernandez testified that he believed that Joseph’s pulmonary embolism originated in Joseph’s leg

due to the gunshot wound. Specifically, Dr. Fernandez said, “Anyone who has trauma to the leg and debilitated is—is at risk for blood clots. Him, with his underlying disease, he’s at a higher risk for blood clots. So the trauma, combined with his underlying illness, he’s a perfect storm waiting for a blood clot to happen.” When asked, “So, in your opinion, does the gunshot wound ultimately kill Mr. Joseph,” Dr. Fernandez responded, “The gunshot wound and the trauma from that, that’s the—that leads to his blood clot, and the contributory factor with his underlying illness of the abnormal proteins he has, deficiency of the protein, those are significant contributory factors.” Dr. Fernandez explained,

If that blood clot did not travel up there and—and settle in the lungs, I don’t know—I mean, the pulmonary embolism is what killed him, and my opinion is it started at the leg and went up to the lungs. It’s possible in theory that one could have it start in the lungs and just start there, it’s possible.

Dr. Fernandez opined that “blood clots form in areas where there’s trauma” and that Joseph had trauma to the leg due to the gunshot wound. According to Dr. Fernandez, “The bone was fractured, and it was healing. That puts pressure on the blood vessels. It causes problems with blood flow in that leg, and [] it causes the risk to increase for the blood clot in that leg.” He continued explaining that the clot then “travels up to the lung, and you could have a small part of it in the lung, and then it gets larger as time goes on.”

Dr. Fernandez stated that Joseph had a blood clot behind the knee of his wounded leg; however, although Joseph had a history of clotting in the unharmed leg, he did not have any clots in that area when he performed the autopsy.⁴ Dr. Fernandez opined that Joseph’s right leg had a larger circumference than his left leg because of low blood flow

⁴ Dr. Fernandez explained that “if you have a case where there’s a blood clot in the lung, the general procedure is to cut back of the legs, both of them, behind the knee, and see which one of the legs has a blood clot in it. And so the incision here was done at the back of the leg, behind the knee, in—in both of the legs.”

that was caused by the gunshot injury to his leg. Dr. Fernandez testified that Joseph had deep vein thrombosis in his injured leg and that the pulmonary embolism that caused his death began in the deep veins of his wounded leg. When asked by the prosecutor if being shot sped up Joseph's death, Dr. Fernandez replied, "I would say so. That's true." Dr. Fernandez testified that whether Joseph died immediately, a month later, or five years later would not have any bearing on his opinion that the gunshot wound caused his death. Dr. Fernandez explained that due to being shot in the head, leg, and arm by appellant, Joseph was at risk of excessive bleeding in those areas and given that Joseph suffered from a blood clotting illness, his treating physicians were forced to decide whether to risk excessive bleeding by prescribing blood thinners to Joseph; however, Joseph's doctors decided against giving Joseph any blood thinners immediately after he was shot and instead put a filter to prevent blood clots from going into his lungs. According to Dr. Fernandez, in addition to the gunshot wound itself, Joseph's immobility, which he traced to the gunshot wounds, contributed to the development of the pulmonary embolism that killed Joseph. Dr. Fernandez stated,

Some—when someone has injury to the leg, gunshot wound to the leg, fracture to the leg, that is an injury that is not going to heal from that day to the next. It's going to be a healing process. It's a gunshot wound involving trauma to the leg, fracturing of the leg, and it doesn't heal overnight. That takes months, years for it to get back to its normal state. So that's a healing process.

....

If the—if there's a delay between the trauma and death, the—the person is at risk for other complications like blood clots. Anybody who has an injury and is bedridden or immobilized or is not as active as they were before, their blood is not circulating the way it was before. They're at risk for a blood clot. They're also—if they're not breathing normally because of the injury for some reason, they're at risk for infection, like a lung infection.

They're also at risk for infection in the area where they had the trauma. Infections, blood clots, those are the—some of the main reasons that people end up dying after the injury.

Although appellant acknowledges that Dr. Fernandez testified that the gunshot wound caused Joseph's death, appellant points to evidence contradicting Dr. Fernandez's opinion and argues that his "conduct, standing alone, was insufficient to cause the death of Victor Joseph." However, it was within the province of the jury to resolve any conflicts in the evidence regarding Dr. Fernandez's opinion that appellant's conduct caused Joseph's death. See *Brooks*, 323 S.W.3d at 899. Therefore, to the extent that appellant complains of contrary evidence, we may not reverse the judgment on that basis if the evidence supports the jury's finding on causation. See *id.*

The State argues that Dr. Fernandez's opinion that the blood clot resulted in Joseph's leg due to, at least in part, trauma and inactivity from the gunshot wound sufficiently supports the jury's finding on causation. We agree with the State. As set out above, although Dr. Fernandez agreed that there could have been other possibilities as to the causation of the pulmonary embolism, he unequivocally stated that in his opinion the gunshot wound caused Joseph to suffer the embolism in combination with Joseph's blood clotting medical condition and his immobility that was also caused by the gunshot wound. In addition, as the finders of fact, the jury was free to reject any evidence contrary to Dr. Fernandez's testimony.⁵ See *id.* Moreover, Dr. Fernandez explained that Joseph's

⁵ We need not address appellant's complaint that the standard of review regarding expert opinions needs clarification because the *Jackson* standard applies in this case. *Jackson v. Virginia*, 443 U.S. 307, 319 (1979). We note that appellant's complaints regarding Dr. Fernandez's opinion as speculative, as having an improper basis, or as being unreliable should have been challenged under *Robinson, Daubert*, and their progeny. See *Russeau v. State*, 171 S.W.3d 871, 881 (Tex. Crim. App. 2005) ("The proponent of scientific evidence must demonstrate to the trial court, by clear and convincing evidence, that the scientific evidence is reliable. The proponent of 'hard' scientific evidence must satisfy three criteria to demonstrate reliability: (1) the underlying scientific theory is valid; (2) the technique applying the theory is valid; and, (3) the technique was properly applied on the occasion in question.") (citing *Kelly v. State*, 824 S.W.2d 568, 573 (Tex. Crim. App. 1992)); see also *Daubert v. Merrell Dow Pharms., Inc.*, 509 U.S. 579,

blood-clotting condition required him to take blood thinning medication. However, according to Dr. Fernandez, when Joseph was shot, he was not able to take this blood thinning medication due to a risk of excessive bleeding in the brain or at the wound entries in his arm and leg. Dr. Fernandez explained that, due to his blood-clotting condition and the wound on his leg, Joseph developed deep vein thrombosis which eventually led to the pulmonary embolism that killed him. From this evidence, the jury could have reasonably inferred that if Joseph had not been shot, the deep vein thrombosis and pulmonary embolism would not have occurred. Viewing the evidence in the light most favorable to the prosecution, the evidence supported a finding that appellant's conduct of shooting Joseph in the leg along with the other cause, i.e., Joseph's genetic medical condition, together caused his death. See *Robbins*, 717 S.W.2d at 351. To reverse, we must conclude that the evidence showed that appellant's conduct was clearly insufficient to cause Joseph's death. See TEX. PENAL CODE ANN. § 6.04(a). Based on Dr. Fernandez's testimony, we are unable to do so. See *id.* Thus, we conclude that a rational fact-finder could have found that appellant's conduct caused Joseph's death beyond a reasonable doubt.⁶ See *Jackson*, 443 U.S. at 319; see also *Brooks*, 323 S.W.3d at 898–99. Accordingly, we overrule appellant's first issue.

594–95 (1993); *E.I. du Pont de Nemours & Co. v. Robinson*, 923 S.W.2d 549, 556 (Tex. 1995). However, because no such challenge was made below, we conclude appellant's complaints were not preserved for our review. See *Delane v. State*, 369 S.W.3d 412, 429 (Tex. App.—Houston [1st Dist.] 2012, pet. ref'd) (citing *Scherl v. State*, 7 S.W.3d 650, 652 (Tex. App.—Texarkana 1999, pet. ref'd) (concluding that an objection by the defendant that the expert's testimony was inadmissible “under Rule 702, *Daubert*, *Kelly*, and *Hartman*” was insufficient to “to identify the specific deficiency with respect to reliability or qualifications”); *Chisum v. State*, 988 S.W.2d 244, 250–51 (Tex. App.—Texarkana 1998, pet. ref'd) (explaining that general objection to expert opinions without specifying particular deficiency in qualifications or reliability failed to preserve error); *Elmore v. State*, No. 07–04–0587–CR, 2005 WL 2347401, at *2 (Tex. App.—Amarillo Sept. 26, 2005, pet. ref'd) (mem. op., not designated for publication) (determining that an objection on the basis of “no reliable foundation” did not advise the trial court of any specific deficiency in the testimony, and thus, it did not preserve error). Therefore, to the extent he makes such an argument, we overrule it.

⁶ Appellant appears to complain that Dr. Fernandez could not provide direct evidence that the

III. ACCOMPLICE WITNESS

By his second issue, appellant contends that the evidence is insufficient to connect him to the offense without the testimony of Rosanna, his accomplice. Appellant argues once we eliminate Rosanna's testimony, the evidence shows that (1) there was gun residue on his hands, (2) he had spoken to someone in the house in a threatening manner prior to the shooting, and (3) the vehicle he was driving may have matched the description of a vehicle fleeing from the scene. However, appellant claims that each piece of the above-stated evidence is "suspect."

A. Applicable Law

A person cannot be convicted based upon the testimony of an accomplice witness unless the testimony is corroborated by other evidence tending to connect the defendant with the offense committed; and the corroboration is not sufficient if it merely shows the commission of the offense. TEX. CODE CRIM. PROC. ANN. art. 38.14 (West, Westlaw through 2015 R.S.). Corroborating evidence can be direct or circumstantial and does not have to establish the guilt of the accused. *Smith v. State*, 332 S.W.3d 425, 442 (Tex. Crim. App. 2011) ("The direct or circumstantial non-accomplice evidence is sufficient corroboration if it shows that rational jurors could have found that it sufficiently tended to connect the accused to the offense."); *Gill v. State*, 873 S.W.2d 45, 48 (Tex. Crim. App. 1984) (en banc). The corroborating evidence must merely tend to connect the accused to the commission of the offense. *Smith*, 332 S.W.3d at 442. In reviewing a complaint of insufficient corroborating evidence, we are required "to consider the combined force of all of the non-accomplice evidence that tends to connect the accused to the offense." *Id.*

gunshot wound caused Joseph's pulmonary embolism. However, as previously set out, circumstantial evidence suffices. See *Hooper v. State*, 214 S.W.3d 9, 15 (Tex. Crim. App. 2007).

B. Discussion

Guadalupe Rodriguez, a detective with the Corpus Christi Police Department, testified that shortly after the drive-by shooting, Rosanna and appellant were apprehended in appellant's vehicle, a vehicle appellant admitted he possessed the day of the shooting. Detective Rodriguez said, "In this case, we had obtained information that there was a vehicle leaving the scene of—of the shooting. The vehicle had a silver or chrome-colored rocker panels on the bottom, and [appellant] was—arrived driving that—a vehicle similar to that, so we went ahead and impounded it."

Kenneth "Kenny" Reyna, Rosanna's boyfriend and a guest at the party, testified that Rosanna used Joseph's phone to make a call to appellant. Reyna stated that later, prior to the drive-by shooting, he heard an incoming phone call on Joseph's phone from a caller asking, "Is this bitch-ass Kenny?" Reyna implied that the caller must have been appellant because Reyna had no enemies other than appellant. Garcia stated that Rosanna called Joseph "saying that she was going to come back and shoot the house up." Luna testified that he heard a message left on Joseph's phone from appellant stating, "Where is punk ass Kenny at? Tell him, he's dead."

Detective Rodriguez requested a search of Joseph's phone for any calls to or from appellant's mother's phone.⁷ According to Detective Rodriguez, appellant admitted he was in possession of his mother's phone the entire evening and morning of the shooting. A cell phone analysis report, admitted into evidence, shows that a person made four outgoing calls from Joseph's phone to appellant's mother's phone. In addition, the report shows that there was one incoming call from appellant's mother's phone to Joseph's

⁷ The evidence shows that Rosanna used Joseph's cell phone to call appellant's mother's phone and that Joseph received threatening calls from someone using appellant's mother's phone.

phone, and that Joseph missed one incoming call from appellant's mother's phone, which supports the witnesses' testimony that appellant made threatening calls to Joseph.

Finally, on the morning of the shooting, Officer Kelly Rodriguez performed gunshot residue tests on appellant and Rosanna. DPS forensic chemist, Rusty White, testified that the tests suggested that both appellant and Rosanna had recently fired a weapon, been in close proximity to a weapon being fired, or had been in contact with a surface with gunshot primer residue particles.

As previously stated, the corroborating evidence need not establish appellant's guilt. See *Smith*, 332 S.W.3d at 442. We conclude that the combined force of the above-mentioned evidence tends to connect appellant to the commission of the murder in this case. See TEX CODE CRIM. PROC. ANN. art. 38.14; *Smith*, 332 S.W.3d at 442. We overrule appellant's second issue.

IV. CONCLUSION

We affirm the trial court's judgment.

NORA L. LONGORIA,
Justice

Do not publish.
TEX. R. APP. P. 47.2(b).

Delivered and filed the
17th day of November, 2016.