



NUMBER 13-15-00273-CR

COURT OF APPEALS

THIRTEENTH DISTRICT OF TEXAS

CORPUS CHRISTI – EDINBURG

ERIC TOMAS ATTWOOD,

Appellant,

v.

THE STATE OF TEXAS,

Appellee.

On appeal from the 139th District Court
of Hidalgo County, Texas.

MEMORANDUM OPINION

**Before Chief Justice Valdez and Justices Rodriguez and Benavides
Memorandum Opinion by Chief Justice Valdez**

An Hidalgo County jury found appellant Eric Tomas Attwood guilty as a party to the murder of Miguel Vasquez. The trial court sentenced Attwood to fifty years in prison. See TEX. PENAL CODE ANN. § 19.02(b) (West, Westlaw through 2015 R.S.); *see also id.* § 7.02(a)(2) (West, Westlaw through 2015 R.S.). By two issues, Attwood contends that: (1) the evidence is legally insufficient to support his conviction as a party to Vasquez's

murder; and (2) because the evidence is legally insufficient, a rational jury could have only found him guilty of the lesser-included offense of deadly conduct. We affirm.

I. BACKGROUND

This case involves a drive-by shooting that occurred on October 5, 2012 in Edinburg, Texas. The jury heard the following evidence at trial.

Attwood's fifteen-year-old sister-in-law, Lucinda Tijerina, and Lucinda's cousin, Julissa Tijerina, got a ride from a friend to attend a party in Edinburg. The party was being held on 29th Street in an undeveloped lot located next to the residence of one of the patrons of the party. Approximately fifteen people attended the party. Vasquez was one of the attendees, but he stayed inside his car talking to his friends the whole time. Vasquez's car was parked along the curb of the lot near the gathering of people at the party.

Approximately two hours after arriving to the party, Lucinda and Julissa got into an argument with some of the patrons. Because the friend with whom they rode to the party did not want to leave, Lucinda and Julissa left the party on foot. Lucinda made arrangements by phone to have Attwood and Yaritza Tijerina, Lucinda's older sister, pick them up at a fast-food restaurant that was within walking distance of the party.

Attwood and Yaritza headed in the direction of the restaurant in Attwood's van. Accompanying Attwood and Yaritza in the van were three individuals: Raul Lara and Leonardo Moreno—both of whom were described at trial as Attwood's friends; and Martin Tijerina—Attwood's brother-in-law.

Attwood and Yaritza picked up Lucinda and Julissa near the fast-food restaurant. After Lucinda and Julissa got into the back of Attwood's van, Yaritza became upset upon

learning that patrons of the party treated members of her family badly. Yaritza asked Lucinda and Julissa to tell her the location of the party. Lucinda and Julissa did not disclose the location, but Yaritza recognized a person she knew when Attwood drove by a lot where people were gathered.

Having found the party, Attwood drove past the lot, made a U-turn, drove back to the lot, and stopped in front of the party. At this point, Attwood's van and Vasquez's car were stationed in opposite directions on opposite sides of 29th Street. From inside the van, Raul and Leonardo began arguing with a patron at the party in defense of Lucinda and Julissa. As the argument with the patron escalated, Leonardo opened the door to the van, and Raul, with one foot planted outside the van, began shooting several bullets towards fleeing patrons. Leonardo, who had his own gun, joined in the shooting from inside Attwood's van. By this point, Vasquez saw what was occurring from inside his car and attempted to drive away from the scene. As Vasquez drove forward, Raul reentered the van. Attwood then began to drive forward slowly while the van's door remained open. When Vasquez's car crossed paths with Attwood's van, Raul shot no less than four bullets at Vasquez's car. One bullet penetrated Vasquez's neck, and he bled to death at the scene. Attwood then drove away from the scene.

After leaving the scene, Attwood dropped off Martin, Leonardo, and Raul at their respective houses and spent the night at Yaritza's house with Lucinda and Julissa. During the time that Lucinda and Julissa were in Attwood's company, Attwood never confronted Raul or Leonardo about the shooting or otherwise repudiated or denounced their action. Instead, when asked if Attwood said anything after the shooting, Julissa testified: "He just told us that that's the type of things he does for us."

The day after the shooting, investigators learned that Attwood was staying at Yaritza's house. However, by the time investigators arrived to Yaritza's house, Attwood had already fled on foot. Shortly thereafter, Attwood turned himself in to the police.¹

After hearing this evidence, the jury found Attwood guilty as a party to Vasquez's murder. This appeal followed.

II. LEGAL SUFFICIENCY

By his first issue, Attwood contends that the evidence detailed above is insufficient for a rational jury to find him guilty as a party to Vasquez's murder.

A. Standard of Review and Applicable Law

In conducting our legal sufficiency review, we view "the evidence in the light most favorable to the jury's verdict and determine whether any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *Gross v. State*, 380 S.W.3d 181, 185 (Tex. Crim. App. 2012) (citing *Jackson v. Virginia*, 443 U.S. 307 (1979)). "Juries are permitted to draw reasonable inferences from the evidence, but they are not permitted to draw conclusions based on speculation." *Id.* at 188 (citing *Hooper v. State*, 214 S.W.3d 9, 15 (Tex. Crim. App. 2007)).

A person is criminally responsible for 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." TEX. PENAL CODE ANN. § 7.02 (West, Westlaw through 2015 R.S.). To determine whether an individual is a party to an offense, we may look to "events before, during, and after the commission of the offense." *Gross*, 380 S.W.3d at 186 (quoting *Wygal v. State*, 555 S.W.2d 465, 468–69 (Tex. Crim.

¹ All individuals inside the van during the shooting were eventually apprehended as well.

App. 1977)). We may also “rely on circumstantial evidence to prove party status.” *Id.* (citing *Ransom v. State*, 920 S.W.2d 288, 302 (Tex. Crim. App. 1996)). There must be sufficient evidence of an understanding and common design to commit the offense—that is, a “prior or contemporaneous plan” to commit the offense. *Id.* (citing *Guevara v. State*, 152 S.W.3d 45, 49 (Tex. Crim. App. 2004)). However, “mere presence of a person at the scene of a crime, or even flight from the scene, without more, is insufficient to support a conviction as a party to the offense.” *Id.* (citing *Thompson v. State*, 697 S.W.2d 413, 417 (Tex. Crim. App. 1985)).

B. Analysis

In this case, Attwood was not merely present for a murder; nor did he simply flee from the scene of a shooting. *See id.* Beyond such presence and flight, the evidence showed that Attwood was aware that Lucinda and Julissa had been involved in an argument with some people at a party and that Yaritza was intent on finding the party. After finding the party, Attwood drove past the party once, made a U-turn, returned to the party, and stationed his van in front of the place where the patrons had gathered. Attwood kept the van stationary while Raul and Leonardo opened fire on fleeing patrons. Attwood waited for Raul to finish shooting and get back in the van; and once Raul got back in the van, Attwood drove forward at a speed that was slow enough for Raul to discharge no less than four bullets into Vasquez’s car as the vehicles crossed each other. Furthermore, Attwood did not confront Raul or Leonardo before, during, or after the shooting to denounce their action; instead, Julissa testified that “[Attwood] just told us that that's the type of things he does for us.” *Compare id.* at 188 (reversing, for insufficient evidence, appellant’s murder conviction as a party to murder when nothing beyond mere

speculation supported the State's theory that appellant stationed his car at the scene of the shooting as part of a plot to distract the victim while his passenger prepared the gun used to shoot the victim, as evidenced by the fact that, among other things, appellant denounced the shooting by shouting "No, no" immediately before his passenger shot the victim) *with Smith v. State*, 781 S.W.2d 675, 678 (Tex. App.—Dallas 1989, pet. ref'd) (holding that the evidence was sufficient to support appellant's conviction as a party to the offense when appellant drove slowly past the pickup truck twice and studied the truck even though he remained across the street during the actual crime); *Buitureida v. State*, 684 S.W.2d 133 (Tex. App.—Corpus Christi 1984, pet. ref'd) (holding that the evidence was sufficient to support appellant's conviction as a party to the offense when appellant, the driver of the vehicle from which the victim was shot, drove slowly past the scene at least three times before the victim was shot).

When the evidence is viewed in the light most favorable to the jury's verdict, Attwood's complicity went beyond mere presence at and flight from the scene of a crime; Attwood's driving behavior prior to and during the murder, as well as his inculpatory statement to Julissa after the murder, gave the jury a reason to infer—not merely speculate—that he participated in a drive-by shooting in accordance with a prior or contemporaneous plan to assist his friends, Raul and Leonardo. *See Gross*, 380 S.W.3d at 185. Therefore, a rational jury could have found that Attwood, acting with intent to promote or assist the commission of a murder, solicited, encouraged, directed, aided, or attempted to aid his cohorts to commit the murder. *See TEX. PENAL CODE ANN. § 7.02(a)(2)*; *see also Jackson*, 443 U.S. at 326. We overrule Attwood's first issue.²

² By his second issue, Attwood contends that a rational jury could only have found him guilty of deadly conduct, not murder. Attwood's second issue assumes that the evidence is legally insufficient to

III. CONCLUSION

We affirm the judgment of the trial court.

/s/ Rogelio Valdez
ROGELIO VALDEZ
Chief Justice

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TEX. R. APP. P. 47.2(b).

Delivered and filed the
29th day of September, 2016.

support his conviction for murder under the law of parties. Because we find the evidence legally sufficient to support Attwood's conviction for murder, we overrule his second issue as moot.