



**NUMBER 13-16-00693-CR**

**COURT OF APPEALS**

**THIRTEENTH DISTRICT OF TEXAS**

**CORPUS CHRISTI – EDINBURG**

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**MARK BOOKER,**

**Appellant,**

**v.**

**THE STATE OF TEXAS,**

**Appellee.**

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**On appeal from the 319th District Court of  
Nueces County, Texas.**

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## **MEMORANDUM OPINION**

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

Appellant Mark Booker was convicted of manslaughter, a second-degree felony. See TEX. PENAL CODE ANN. § 19.04 (West, Westlaw through 2017 R.S.). By one issue, Booker argues that there was legally insufficient evidence to support his conviction for manslaughter. We affirm.

## I. BACKGROUND

According to video surveillance, on November 6, 2013, Booker was at the Cheetah's nightclub in Corpus Christi. Jeffrey Schexnider was also at the nightclub with another individual. Around 11:00 p.m., Schexnider and his companion exited Cheetah's and stood on the curb outside. Shortly thereafter, Booker and several other individuals came outside and surrounded Schexnider. Schexnider started speaking to a man wearing a baseball cap. Abruptly, the man with the baseball cap punched Schexnider in the jaw. Schexnider tried to distance himself but the other individuals outside all followed him into the parking lot. A couple of the individuals threw punches at Schexnider, but it is hard to determine from the video if any of the punches actually landed. While Schexnider was holding his arms up to defend against the group of individuals, Booker walked up from the side and forcefully punched Schexnider in the side of the neck. Schexnider collapsed to the pavement and remained motionless.

Marco Fam, a security guard at the nightclub, testified that Booker delivered the final blow. Detective Ralph Lee testified that Booker's blow to Schexnider was the most forceful, based on his investigation. Jennifer Rulon, M.D. performed the autopsy on Schexnider. Dr. Rulon testified that she discovered two main internal injuries: a subarachnoid hemorrhage and a tear in the vertebral artery in the neck. According to Dr. Rulon, the tear in the neck would have been caused by someone punching him in the neck and the neck twisting with enough force to cause a tear. She also testified that the subarachnoid hemorrhage was caused by blood seeping up from the tear in the neck artery or by a severe blow to the head, such as his head hitting the ground forcefully, or by some combination of the two. Dr. Rulon testified that the cause of death was "probably

a combination” of both the tear in the neck and the impact blow to the head; however, she was not able to identify which punch during the fight caused the fatal injuries. Booker admitted to hitting Schexnider while his head was pointed towards the other attackers.

A jury found Booker guilty of manslaughter and assessed punishment at six years’ imprisonment. This appeal ensued.

## II. STANDARD OF REVIEW AND APPLICABLE LAW

In determining whether the evidence is legally sufficient to support a conviction, a reviewing court must consider all of the evidence in the light most favorable to the verdict and determine whether, based on that evidence and reasonable inferences therefrom, a rational fact finder could have found the essential elements of the crime beyond a reasonable doubt.

*Whatley v. State*, 445 S.W.3d 159, 166 (Tex. Crim. App. 2014). It is not the State’s burden to disprove “every conceivable alternative to the defendant’s guilt”; the State must simply prove the essential elements of the crime beyond a reasonable doubt. *Temple v. State*, 390 S.W.3d 341, 363 (Tex. Crim. App. 2013). Thus, on appeal, we determine only if a reasonable jury could have found the essential elements of manslaughter beyond a reasonable doubt. See *Whatley*, 445 S.W.3d at 166. Even the testimony of a single witness can be sufficient to support a felony conviction. See *Aguilar v. State*, 468 S.W.2d 75, 77 (Tex. Crim. App. 1971); *Shah v. State*, 403 S.W.3d 29, 35 (Tex. App.—Houston [1st Dist.] 2012, pet. ref’d).

The legal sufficiency of evidence is measured against 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) (en banc). Such a charge in this case would state that a person commits the offense of manslaughter if the person recklessly causes the death of an individual. See TEX. PENAL CODE ANN. § 19.04.

## **A. Concurrent Causes**

The Texas Penal Code provides that “[a] person is criminally responsible if the result would not have occurred but for his conduct, operating either alone or concurrently with another cause, unless the concurrent cause was clearly sufficient to produce the result and the conduct of the actor clearly insufficient.” *Id.* § 6.04(a) (West, Westlaw through 2017 R.S.). When concurrent causes are present, the “but for” requirement is satisfied when either (1) the accused’s conduct is sufficient by itself to have caused the harm; or (2) the accused’s conduct coupled with another cause is sufficient to have caused the harm. *Robbins v. State*, 717 S.W.2d 348, 351 (Tex. Crim. App. 1986); *Wooten v. State*, 267 S.W.3d 289, 296 (Tex. App.—Houston [14th Dist.] 2008, pet. ref’d).

The existence or nonexistence of a causal connection is a question for the jury’s determination. The State is not required to prove beyond a reasonable doubt that the act alleged in the indictment alone caused the death. It is an established rule in homicides that if the act of the defendant alleged in the indictment contributed to the death of the deceased, he is responsible, though other contributing causes existed.

*Fountain v. State*, 401 S.W.3d 344, 358 (Tex. App.—Houston [14th Dist.] 2013, pet. ref’d)  
(internal citations omitted).

## **B. Law of Parties**

Under the law of parties, the State does not have to prove that a person physically committed the crime, but the evidence must be sufficient to show that even though the criminal conduct was performed by another, the defendant was still criminally responsible for that other person’s behavior. TEX. PENAL CODE ANN. § 31.03 (West, Westlaw through 2017 R.S.). To be criminally responsible for another person’s conduct, a person must have acted with the “intent to promote or assist the commission” of the offense by soliciting, encouraging, directing, aiding, or attempting to aid the other person to commit

the offense. *Id.* § 7.02(a)(2) (West, Westlaw through 2017 R.S.). The law of parties need not be pled in the indictment. *Marable v. State*, 85 S.W.3d 287, 287 (Tex. Crim. App. 2002).

Mere presence at a crime scene is insufficient to establish guilt under the law of parties. *See Gross v. State*, 380 S.W. 3d 181, 186 (Tex. Crim. App. 2012). To determine whether the defendant was a party to the offense, the fact finder may “look to events occurring before, during, and after the commission of the offense” that show an “understanding and common design to do the prohibited act.” *Ransom v. State*, 920 S.W.2d 288, 302 (Tex. Crim. App. 1994). Circumstantial evidence can assist the fact finder in establishing party status. *See id.*

### **III. DISCUSSION**

On appeal, Booker challenges the legal sufficiency of the evidence. Specifically, he argues that the evidence is insufficient to show that he was the principal actor because Dr. Rulon was unable to determine which punch caused the fatal injuries. Thus, he argues that the evidence does not sufficiently establish that he caused Schexnider’s death. We disagree.

Booker could be held liable for Schexnider’s death in two ways: (1) by evidence sufficient to show that he recklessly caused the death; or (2) by evidence sufficient to establish that Booker was a party to the criminal conduct of another. *See Robbins*, 717 S.W.2d at 351; TEX. PENAL CODE ANN. §§ 6.04(a), 7.02. The video surveillance and the testimony offered at trial indicated that Booker’s punch was the most forceful punch that connected with Schexnider. Immediately after Booker punched Schexnider in the neck, Schexnider toppled to the ground, hit his head on the floor, and then remained motionless.

Dr. Rulon testified that a tear in neck and the blow to the head likely caused the death. Viewing all the evidence in the light most favorable to the verdict, a rational fact-finder could have reasonably found that Booker's punch was either sufficient to have caused Schexnider's death by itself or that Booker's punch, coupled with the punches landed by the other individuals present, was sufficient to cause Schexnider's death. See *Whatley*, 445 S.W.3d at 166; *Fountain*, 401 S.W.3d at 358. It does not matter if, or how much, the other individuals contributed to Schexnider's demise as long as Booker's conduct constituted a concurrent cause. See *Robbins*, 717 S.W.2d at 351; *Fountain*, 401 S.W.3d at 358.

Furthermore, even if the evidence was insufficient to convict Booker as the principal actor based on his punch, the evidence was sufficient to find Booker guilty of manslaughter as a party to the offense. Even if Booker did not deliver the final blow, the evidence would allow a reasonable fact-finder to conclude that he was a party to the offense of manslaughter by promoting and assisting the commission of the offense. See TEX. PENAL CODE ANN. § 7.02; *Cordova v. State*, 698 S.W.2d 107, 111 (Tex. Crim. App. 1985) (holding that the evidence was sufficient to establish party liability for a homicide when the defendant was part of a group of people that "simultaneously and jointly attacked" the victim, even though the defendant himself did not inflict the mortal wound).

In sum, a reasonable jury could have found the essential elements of manslaughter beyond a reasonable doubt. See *Whatley*, 445 S.W.3d at 166. We conclude that the evidence was legally sufficient to support Booker's manslaughter conviction, either based on his own conduct or as a party to the offense. See *Robbins*, 717 S.W.2d at 351; *Cordova*, 698 S.W.2d at 111. We overrule Booker's sole 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  
9th day of November, 2017.