



NUMBER 13-18-00196-CR

COURT OF APPEALS

THIRTEENTH DISTRICT OF TEXAS

CORPUS CHRISTI – EDINBURG

ALEXIS ARGUIJO,

Appellant,

v.

THE STATE OF TEXAS,

Appellee.

**On appeal from the 36th District Court
of San Patricio County, Texas.**

MEMORANDUM OPINION

**Before Justices Benavides, Perkes, and Tijerina
Memorandum Opinion by Justice Perkes**

Appellant Alexis Arguijo was convicted of murder, a first-degree felony, and sentenced to thirty years' imprisonment in the Institutional Division of the Department of Criminal Justice. See TEX. PENAL CODE ANN. §§ 12.32, 19.02. By a single issue, Arguijo contends on appeal that the evidence was factually and legally insufficient to support his

conviction.¹ We modify the judgment to correct a clerical error and affirm the judgment as modified.

I. BACKGROUND

Arguijo and his co-defendant, Robert Ray Perez, were charged by indictment with “intentionally or knowingly caus[ing] the death of an individual, namely Lou Anthony Gutierrez, by shooting Lou Anthony Gutierrez with a firearm” on or about March 4, 2015, in San Patricio County, Texas. See *id.* § 19.02(b)(1). Perez was tried first and a jury convicted him of murder and sentenced him to thirty years’ imprisonment.² Arguijo waived his right to a jury trial, electing instead to proceed with a bench trial. The following evidence was presented during his trial.

A. The State’s Case

On March 4, 2015, Gerardo Pulido discovered Gutierrez’s dead body on his family’s rural property in San Patricio County, Texas. The twenty-four-acre property was only accessible by a dirt road, and no one had resided on the overgrown property for years. Pulido would later tell investigators that he was randomly there to check on the property, something he did once every month or two. However, the first officer on the scene, Jim Wells County Constable James Long, noticed something “unusual” about

¹ Texas courts no longer review criminal convictions for factual sufficiency. See *Brooks v. State*, 323, S.W.3d 893, 894 (Tex. Crim. App. 2010) (plurality opinion) (“[T]he *Jackson v. Virginia* legal-sufficiency standard is the only standard that a reviewing court should apply in determining whether the evidence is sufficient to support each element of a criminal offense that the State is required to prove beyond a reasonable doubt.”). Accordingly, we do not address Arguijo’s contention that the evidence was factually insufficient to support his conviction. See *id.*

² This Court modified the judgment of conviction to correct a clerical error and affirmed the judgment, as modified. *Perez v. State*, No. 13-17-00301-CR, 2018 WL 3764559, at *1 (Tex. App.—Corpus Christi—Edinburg Aug. 9, 2018, no pet.) (mem. op., not designated for publication).

Pulido's appearance. Despite the heavy dew on the tall grass across the property, Pulido's pants were dry. Constable Long did not believe Pulido's claim that he had been "randomly" walking the property before discovering the body.

Pulido was familiar with Gutierrez, testifying that he knew him for a couple of years before the two had a falling-out. Pulido's familiarity with Gutierrez allowed him to make the initial identification based on distinctive tattoos on Gutierrez's back. Pulido also knew Arguijo, describing him at trial as his "homeboy" and "good friend."

The San Patricio County Sheriff's Department headed the investigation with the assistance of the Texas Rangers. Deputy Austin Tucker was the investigator responsible for documenting the crime scene and collecting evidence. Gutierrez was shot once in the head, once in the chest, and once in the left forearm. The shots to the head and chest were both fatal. Deputy Tucker recovered a 9mm casing near the body and two 7.62mm casings in an area down the access road. The 7.62mm casings were recovered near a single black basketball shoe; the other shoe hung in a tree nearby. Gutierrez was not wearing any shoes when Pulido discovered his body.

Gutierrez's autopsy was performed by Dr. Adel Shaker with the Nueces County Medical Examiner's Office. Dr. Shaker estimated that Gutierrez died four to seven days before the body was discovered but cautioned that he could not definitely determine the time of death. He also recovered two projectiles from Gutierrez's body that were submitted to the Corpus Christi Police Department for forensic testing.

Investigators spoke with Josue Longoria, who described Gutierrez as his best friend. Longoria testified that Gutierrez had been living with Arguijo up to a week or two

prior to his death. Gutierrez initially met Arguijo through Gutierrez's cousin, Francine Herrera, who was the mother of Arguijo's children. According to Longoria, Gutierrez and Arguijo were members of a street gang called the Texas Chicano Brotherhood (TCB). Longoria, a tattoo artist, gave them both a specific tattoo that signified their membership in TCB, a tattoo Longoria would only give with "permission" from the gang.

Longoria told investigators that he last saw Gutierrez alive on Friday, February 20, 2015. Gutierrez received a phone call that afternoon and then directed Longoria to drop him off at Arguijo's home in Mathis, Texas. When they arrived, both Arguijo and Perez were present. Longoria testified that Gutierrez was wearing Southpole pants and a white t-shirt, the same clothes Gutierrez was wearing when his body was discovered on March 4th. Gutierrez was also wearing the same black basketball shoes recovered at the crime scene next to the 7.62mm casings. Importantly, Gutierrez was carrying a .25 caliber handgun with a missing grip on one side of the handle.

On March 6, 2015, Sergeant Ernest Solis, Jr. and Ranger Randy Aguirre questioned Arguijo at his home in Mathis. Arguijo told the investigators that he last saw Gutierrez on Saturday, February 21, 2015. Gutierrez and Longoria came by Arguijo's home while he and Francine were doing yard work and they spoke outside for a few minutes before Gutierrez and Longoria left together.

During the interview, Arguijo first volunteered that Francine purchased a Taurus, 9mm handgun for him as a Valentine's Day gift three weeks prior but then claimed the gun had been stolen two days later. Sergeant Solis confirmed through store records that Arguijo filled out the paperwork to purchase the handgun at an Academy in Corpus Christi,

Texas and a card in Francine's name was used to purchase the gun on February 20, 2015, at 8:36 p.m. Still photographs from the store's surveillance cameras showed Arguijo and Francine purchasing the gun, along with Monarch 9mm hollow-point ammunition.

During the interview, Arguijo also told investigators that he previously owned an AK-47, but that it had been stolen along with the Taurus handgun. Sergeant Solis confirmed through store records that Arguijo purchased an AK-47 on February 11, 2015, at Tip's Gold-N-Things pawnshop in Corpus Christi. Arguijo never reported either gun stolen to the police.

David Curtiss, a firearms examiner with the Corpus Christi Police Department Crime Lab, analyzed the three casings recovered from the scene and the two projectiles recovered from Gutierrez's body. Based on his examination, Curtiss opined that the projectiles removed from Gutierrez's body were the same caliber as the 9mm casing recovered at the scene. Curtiss confirmed that the model of Taurus handgun purchased for Arguijo fires 9mm rounds and that an AK-47 fires 7.62mm rounds. Curtis did acknowledge, however, that there are a number of other models that can fire these same calibers, especially the 9mms. Curtis noted that the 7.62mm casings did not show the signs of corrosion he would expect to see on those particular casings if they had been exposed to the elements for an extended period of time. Finally, Curtiss identified the manufacturer of the 9mm casing as Prvi Partizan, the same manufacturer of Academy's store brand ammunition—Monarch.

Arguijo reportedly moved out of his residence around 10:00 p.m. on the day of the interview and moved into his grandmother's home. Sergeant Solis later executed a search

warrant on her residence and recovered a .25 caliber pistol hidden on a shelf in a makeshift bedroom. During trial, Longoria was shown pictures of the recovered pistol and identified it as the same gun Gutierrez was carrying when Longoria dropped him off at Arguijo's home. The pictures depict a small handgun with a missing grip on one side of the handle.

In April 2015, Ranger Aguirre interviewed Javier Gutierrez, who claimed to have information about the murder. Although he willingly testified at Perez's trial, Javier was reluctant to testify at Arguijo's trial. He acknowledged on the stand that he previously testified at Perez's trial to overhearing Perez confess to shooting Gutierrez but denied that he gave a prior statement to Ranger Aguirre that Arguijo and Perez committed the crime together. The State subsequently called Ranger Aguirre, who testified that during the course of the interview, Javier implicated both Arguijo and Perez and described the weapon used as a 9mm.

Mario Garcia, a former TCB member, testified that Gutierrez became a member of the gang after Arguijo vouched for him. In February 2015, Garcia was living with Mario Arredondo, Arguijo's cousin and a TCB leader, on a property in Falfurrias. TCB members would meet at Arredondo's place in Falfurrias for barbecues and to discuss gang business. Garcia recalled one such meeting that occurred on a Sunday. He overheard Arguijo say "I took care of it" and observed one of the other TCB leaders respond excitedly. On cross examination, though, Garcia admitted that he did not know the context of the conversation at the time—i.e., what was "taken care of"—and never heard Arguijo admit to actually committing the murder himself.

Lieutenant Russel Kirk subpoenaed Arguijo and Gutierrez's cell phone records from AT&T and submitted them to the Telecommunications Research Analysis Unit of the Texas Department of Public Safety. One of the members of that unit, Elizabeth Buhay, used their phone records to create a map showing Arguijo and Gutierrez's general location at the time they made or received a phone call based on the closest cell phone tower that received and transmitted the signal. Gutierrez was in Mathis when he received a call from Arguijo's cell phone at 9:17 p.m. on Saturday, February 21, 2015. That phone call was the last recorded activity on Gutierrez's cell phone.

Prior to that call, Arguijo or someone using his cell phone, called Gutierrez ten times in the preceding four days. After that phone call, there is no record of anyone placing a call to Gutierrez on Arguijo's cell phone. Buhay was also able to determine that Arguijo's cell phone was active in Falfurrias on Sunday, February 22, 2015, from approximately 1:00 p.m. until 4:00 p.m., even though Arguijo told investigators he had not been to Falfurrias since early February.

B. The Defense's Case

Arguijo did not call any witnesses. The State did agree, however, to stipulate to the contents of a prior statement given by Matthew Garcia. Matthew told investigators that during a TCB meeting in Falfurrias around the time of the murder, he observed Perez receive orders to carry out a hit on Gutierrez but Arguijo was not present at the meeting.

Arguijo's primary defensive theory was to question the thoroughness of the police investigation and raise the possibility of a different perpetrator through cross-examination of the State's witnesses. In particular, Gutierrez purportedly owed money to another TCB

member named Joshua DeLeon, a/k/a “Teletubby.” Sergeant Solis acknowledged that, despite receiving a tip about DeLeon’s possible involvement, he accepted DeLeon’s statement that he was not involved in the crime and ruled him out as a suspect. Sergeant Solis also acknowledged that he took voluntary DNA samples from four different people, including Pulido and Arguijo, but not DeLeon.

Deputy Tucker, the crime scene investigator, admitted that the casings found at the scene were not tested for fingerprints. Tucker also acknowledged that there were tire tracks at the scene, but investigators did not attempt to develop this evidence. Buhay confirmed that she was only asked to analyze the phone records of Arguijo and Gutierrez.

Finally, Arguijo pointed out that, despite testing a number of items, investigators were unable to link his DNA to the crime scene. However, there was no evidence presented at trial that any other person’s DNA was present at the crime scene.

C. The Verdict

The trial court found Arguijo guilty and sentenced him to thirty years’ imprisonment. This appeal ensued.

II. SUFFICIENCY OF THE EVIDENCE

By a single issue, Arguijo challenges the legal sufficiency of the evidence supporting his conviction.

A. Applicable Law and Standard of Review

In a legal sufficiency review, we consider the evidence in the light most favorable to the verdict to determine whether “any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.” See *Chambers v. State*, 580 S.W.3d

149, 156 (Tex. Crim. App. 2019); *Brooks v. State*, 323 S.W.3d 893, 895 (Tex. Crim. App. 2010) (plurality op.) (citing *Jackson v. Virginia*, 443 U.S. 307, 319 (1979)). In our analysis, we defer to “the trier of fact to fairly resolve conflicts in testimony, to weigh the evidence, and to draw reasonable inferences from basic facts to ultimate facts.” See *Hooper v. State*, 214 S.W.3d 9, 13 (Tex. Crim. App. 2007) (citing *Jackson*, 443 U.S. at 318–19); TEX. CODE CRIM. PROC. ANN. art. 38.04. When the record contains conflicting inferences, we presume that the trier of fact resolved any such conflicts in favor of the prosecution, and we must defer to that resolution. See *Padilla v. State*, 326 S.W.3d 195, 200 (Tex. Crim. App. 2010). Additionally, circumstantial evidence and direct evidence are equally probative, and circumstantial evidence alone can be sufficient to establish guilt. *Guevara v. State*, 152 S.W.3d 45, 49 (Tex. Crim. App. 2004).

Sufficiency of the evidence is measured by the elements of the offense as defined by a hypothetically correct jury charge. *Broughton v. State*, 569 S.W.3d 592, 608 (Tex. Crim. App. 2018) (citing *Malik v. State*, 953 S.W.2d 234, 240 (Tex. Crim. App. 1997)). Such a 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.*

B. Analysis

Under a hypothetically correct jury charge, the State was required to prove that Arguijo intentionally or knowingly caused the death of Gutierrez by shooting him with a firearm on or about March 4, 2015, in San Patricio County, Texas. See TEX. PENAL CODE

ANN. § 19.02(b)(1). Arguijo's chief contention on appeal is that the evidence presented by the State was entirely circumstantial. But as we previously noted, circumstantial evidence and direct evidence are equally probative. *Guevara*, 152 S.W.3d at 49. In this case, the cumulative force of the incriminating circumstances was sufficient to support Arguijo's conviction. See *Hooper*, 214 S.W.3d at 13 (citing *Johnson v. State*, 871 S.W.2d 183, 186 (Tex. Crim. App. 1993)).

Viewing the evidence in the light most favorable to the verdict, it was reasonable for the trial court to conclude that Arguijo and Perez, acting on orders from their gang, lured Gutierrez to Arguijo's home, took him to Pulido's rural property in San Patricio County, and killed him with the guns and ammunition purchased by Arguijo in the days leading up to the murder. See *id.* (reviewing courts should look at "events occurring before, during and after the commission of the offense and may rely on actions of the defendant which show an understanding and common design to do the prohibited act." (quoting *Cordova v. State*, 698 S.W.2d 107, 11 (Tex. Crim App. 1985))).

Specifically, the trial court received undisputed evidence that the TCB ordered a hit on Gutierrez. See *Hacker v. State*, 389 S.W.3d 860, 871 (Tex. Crim. App. 2013) (explaining that evidence of motive and opportunity help link the defendant to wrongful conduct). In the two weeks leading up to the murder, Arguijo acquired an AK-47, a 9mm Taurus handgun, and Monarch 9mm ammunition, all of which were consistent with the casings and projectiles recovered from the crime scene. See *id.* The trial court was free to disbelieve Arguijo's claim that the guns were stolen and therefore unavailable for forensic testing. See *Jones v. State*, 984 S.W.2d 254, 257 (Tex. Crim. App. 1998) ("The

trier of fact is always free to selectively believe all or part of the testimony proffered and introduced by either side.” (citing *Bignall v. State*, 887 S.W.2d 21, 24 (Tex. Crim. App. 1994))). Instead, the court could have reasonably inferred that Arguijo disposed of the guns in an attempt to cover up the crime. See *Hooper*, 214 S.W.3d at 13.

Longoria testified that he dropped Gutierrez off at Arguijo’s home around 7:00 p.m. on Friday, February 20th, but other evidence in the record suggests that Longoria was mistaken about the date and actually took Gutierrez there on Saturday, February 21st. See *Jones*, 984 S.W.2d at 257. Regardless, when Gutierrez arrived at Arguijo’s home, the evidence in the record is sufficient to establish that: (1) Perez was present; (2) Gutierrez was wearing the same clothing he was wearing when he was murdered; and (3) Gutierrez was carrying a handgun that was later recovered from Arguijo’s residence. Because people generally change their clothes daily, the fact that Gutierrez was wearing the same clothing suggests a temporal proximity between the time Gutierrez was last seen with Arguijo and Perez and the time he was killed. See *Hacker*, 389 S.W.3d at 871. But perhaps the most incriminating evidence presented at trial was the recovery of Gutierrez’s gun from Arguijo’s residence.

The cell phone records also implicate Arguijo in several ways. See *Ford v. State*, 444 S.W.3d 171, 179 (Tex. App.—San Antonio 2014) (relying on cell phone records as circumstantial evidence supporting murder conviction) *aff’d*, 477 S.W.3d 321 (Tex. Crim. App. 2015). First, the last call Gutierrez received was from Arguijo’s cell phone at 9:17 p.m., lasting forty-three seconds. This record corroborates Longoria’s testimony that after Gutierrez received a phone call, he directed Longoria to take him to Arguijo’s home. Next,

Gutierrez's cell phone never placed or received another call, giving the impression that Gutierrez was killed that same night, and that his cell phone was destroyed or disabled in an effort to conceal the crime. Also, despite calling Gutierrez ten times in the preceding four days, Arguijo never phoned Gutierrez again, indicating that Arguijo knew Gutierrez was dead before his body was discovered ten days later on March 4th. Finally, although he told investigators he had not been to Falfurrias since early February, the phone records placed Arguijo in Falfurrias on Sunday, February 22nd between 1:00 and 4:00 p.m., which is consistent with the testimony of a former TCB member who overheard Arguijo tell gang leaders at a Sunday barbeque in Falfurrias that he "took care of it."

Reviewing the evidence in the light most favorable to the verdict, we determine that "a rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." See *Chambers*, 580 S.W.3d at 156. Arguijo's single issue is overruled.

III. REFORMATION OF THE JUDGMENT

On review of the record, we observe that the written judgment of conviction for murder contains a clerical error. The judgment states that Arguijo was convicted under §§ 19.03 and 71.02 of the Texas Penal Code, the statutes for capital murder and engaging in organized criminal activity, respectively. See TEX. PENAL CODE ANN. §§ 19.03, 71.02. However, the trial court found Arguijo guilty of murder under § 19.02(b)(1). See *id.* § 19.02(b)(1).

This Court has authority to modify incorrect judgments when the necessary information is available to do so. See TEX. R. APP. P. 43.2(b) (authorizing courts of

appeals to modify the trial court's judgment and affirm as modified); *Bigley v. State*, 865 S.W.2d 26, 27–28 (Tex. Crim. App. 1993) (concluding that Texas Rules of Appellate Procedure empower courts of appeals to reform judgments). Accordingly, we modify the judgment of conviction to reflect that Arguijo was convicted of murder under § 19.02(b)(1) of the Texas Penal Code.

IV. CONCLUSION

We modify the trial court's judgment to correct a clerical error and affirm the judgment as modified.

GREGORY T. PERKES
Justice

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

Delivered and filed the
26th day of March, 2020.