



NUMBER 13-18-00567-CR

COURT OF APPEALS

THIRTEENTH DISTRICT OF TEXAS

CORPUS CHRISTI - EDINBURG

JOHN PAUL DAVILA,

Appellant,

v.

THE STATE OF TEXAS,

Appellee.

**On appeal from the 24th District Court
of Victoria County, Texas.**

MEMORANDUM OPINION

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

Appellant John Paul Davila was convicted of the capital murder of Victor Herrera and sentenced to life in prison without parole in the Texas Department of Criminal Justice—Institutional Division. See TEX. PENAL CODE ANN. § 19.03. By one issue, Davila argues the evidence is insufficient to establish that he caused Herrera’s death while committing a robbery. We affirm.

I. BACKGROUND

At trial, Herrera's widow, Dinicia Herrera, testified that she and her husband moved in with their son Victor Jr. and daughter-in-law Christina after a hurricane damaged their home in Victoria, Texas. According to Dinicia, Herrera would wake up every morning, have breakfast, make his coffee, and then head over to their home to do repair work. Herrera usually returned to his son's home every night at about 7:00 p.m., where he would have dinner, relax for a few hours, and then go to bed.

On January 28, 2018, however, Herrera did not come home. Dinicia became concerned because it was out of character for Herrera to be out so late. She drove to the home at about 7:00 p.m. and a second time at around 10:30 p.m. but did not find her husband or his vehicle. On her third and final trip to the home around midnight, Dinicia testified that she became scared when she saw blood spatters on the house fence. She immediately called Victor Jr. in a panic. Her son told her to stay in her vehicle and that he and his wife would meet her there immediately.

Christina testified that, when she and Victor Jr. arrived at her in-laws' home and saw the blood on the fence, she immediately called 9-1-1. She was still on the phone when she exited the vehicle and saw her father-in-law's black shoe in the yard. Christina found Herrera's body underneath the home. She testified she was distressed and scared.

Detective Anthony Daniel with the Victoria County Sheriff's Office was the lead investigator in the case. Daniel testified that he believed Herrera was attacked near the front of the property and then was dragged approximately thirty feet toward the back of the property. Using an aerial video taken by a drone and police photographs, he pointed

out a trail of blood leading to where Herrera's body was found stashed underneath the house. Daniel further stated that he believed Herrera had been attacked with a metal weight bar found on a lot adjacent to the Herreras' home. He based this theory on the fact that there was a significant amount of blood found at the home's entrance, including spatter on the fence, boards, and sheet metal, as well as a large amount of pooled blood on the ground. The weight bar also had blood on it.

Suzanna Dana, M.D., medical examiner at Central Texas Autopsy, testified that Herrera's manner of death was blunt force face and head trauma and strangulation. She opined that Herrera had likely been severely beaten with an object because he had large lacerations near his left eye area which occur "when a blunt object hits the skin and kind of tears the skin apart." She agreed with the State that certain crescent or semicircular divots in Herrera's face could be consistent with someone striking him with the end of a bar or pipe. She opined, "[U]sually when someone is beaten with a fist, you get [a] much more contusion[-]type injury; but you don't get a lot of lacerations because it just doesn't have enough force in the knuckles to produce the lacerations." She did not believe that these injuries had been made by human hands. If they were, she believed the perpetrator would have had injured and bloody knuckles.

Dr. Dana's autopsy report noted subdural hemorrhages on both the right and left sides of Herrera's brain, and subarachnoid hemorrhages on the undersurface of his right frontal lobe and left occipital lobe. She noted seventeen facial injuries—his left forehead brow bone, cheekbones, jaw, and nose were fractured, and his teeth were loosened. Herrera also had internal injuries in his neck which were consistent with strangulation; his

hyoid bone and thyroid cartilage were fractured and surrounded by hemorrhaging. Dr. Dana also noted large abrasions on Herrera's face and abdomen; she opined these injuries were consistent with being dragged somewhere.

Samantha Cuevas, Davila's former girlfriend, testified that Davila arrived at her foster home in Live Oak, Texas at about 9:00 p.m. that night. Davila offered to give her a ride to San Antonio, Texas to visit her biological mother. When she entered his truck, she noticed he was only wearing pants and socks and that he had blood on the side of his neck, his chest, hands, and pants. She recalled that she kept asking him about the blood but that he kept changing the subject. When the couple arrived in San Antonio, they drove to Davila's mother's home and Davila finally admitted to her that "he had killed one man and . . . stole a vehicle to come down to San Antonio to see [her]." She recalled that Davila showered and left his bloody jeans on the floor in the bedroom. The couple stayed in San Antonio for about two nights, until officers came to arrest Davila.

Officer Mark Molter was one of the officers who arrested Davila in San Antonio. He testified that the Victoria County Sheriff's Department contacted the City of San Antonio Police Department to assist with their investigation of the theft of Herrera's pickup truck and his death. San Antonio police officers set up surveillance around Samantha's mother's home when they located Davila. Molter revealed that when they apprehended and arrested Davila, Samantha helped him search the room where they had been sleeping. Molter stated that they recovered the pair of gray pants Davila had been wearing, which were soiled with dirt and "a lot of blood." They also discovered a wallet with identification belonging to Herrera on top of the television in the room. Herrera's cell

phone was found in a pile of clothing on the bedroom floor.

Davila testified in his defense.¹ He stated that the State removed him from his parents' care at age five and that he grew up in the state child protective services system. When he turned eighteen, he moved in with an aunt before going to live with his grandfather Teofilo Estrada, the Herreras' neighbor.

Davila testified that on January 28, 2018, he asked his grandfather if he could borrow his truck to drive to San Antonio to see his girlfriend Samantha. His grandfather said no and explained that his truck was old and "wouldn't make it a mile out of Victoria." Davila testified he became upset with his grandfather, so he locked himself in his room and smoked some marijuana. A few hours later, Davila stated he snuck out of the house through his bedroom window to ask his neighbor Herrera for a ride to San Antonio. When Herrera told him no, Davila admitted that he became angry and began to punch Herrera in the face and stomach. He testified that he took it "as an opportunity" to "take [Herrera's] truck." Davila testified that after ten or twenty minutes of fighting, Herrera fell. Davila used this opportunity and "bent over him, start[ed] kicking him, kneeing him, and punching him all over the body." After Herrera was on the ground, Davila recalled that he took Herrera's wallet, keys, and vehicle. He claimed Herrera was still breathing when he left, although he looked "a little bloody" with "a lot of bruises." He testified that Herrera was still moving and conscious but "really slow." Davila denied using any kind of metal rod to injure Herrera or dragging Herrera's body anywhere. He claimed that he did not get any bruises on his

¹ Both Davila's attorney and the trial court judge admonished him regarding his Fifth Amendment right to remain silent. Davila acknowledged that he understood his rights against self-incrimination but still wanted to testify.

hands or knuckles from the altercation because he “knew how to fight.” He also denied that he ever told Samantha that he “killed the owner of the truck.”

The jury convicted Davila of capital murder and sentenced him to life in prison without parole. See *id.* Davila appeals.

II. STANDARD OF REVIEW AND APPLICABLE LAW

A. Sufficiency of the Evidence

The Due Process Clause of the Fifth and Fourteenth Amendments to the United States Constitution requires that a criminal conviction be supported by a rational trier of fact’s findings that the accused is guilty of every essential element of a crime beyond a reasonable doubt. *Laster v. State*, 275 S.W.3d 512, 517 (Tex. Crim. App. 2009) (citing *Jackson v. Virginia*, 443 U.S. 307, 316 (1979)). This due process guarantee is safeguarded when a court reviews the legal sufficiency of the evidence. *Id.* Under this review, we consider all of the evidence in the light most favorable to the verdict and determine whether a rational fact finder could have found the essential elements of the crime beyond a reasonable doubt based on the evidence and reasonable inferences from that evidence. *Whatley v. State*, 445 S.W.3d 159, 166 (Tex. Crim. App. 2014); *Jackson*, 443 U.S. at 319. Because the jury is the sole judge of the credibility of the witnesses and of the weight to be given to their testimony, we resolve any conflicts or inconsistencies in the evidence in favor of the verdict. *Ramsey v. State*, 473 S.W.3d 805, 808 (Tex. Crim. App. 2015); *Wesbrook v. State*, 29 S.W.3d 103, 111 (Tex. Crim. App. 2000).

We measure the legal sufficiency of the evidence against the elements of the offense as defined by a hypothetically correct jury charge for the case. *Byrd v. State*, 336

S.W.3d 242, 246 (Tex. Crim. App. 2011). 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 offense for which the defendant was tried. *Id.*

In a capital murder case, the State must prove both that the defendant intentionally or knowingly caused the death of an individual and that he "committed this intentional [or knowing] murder while in the course of committing or attempting to commit" the aggravating felony. *Patrick v. State*, 906 S.W.2d 481, 492 (Tex. Crim. App. 1995); see also TEX. PENAL CODE ANN. § 19.03(a)(2). Hence, the elements of the underlying felony are necessary elements in proving capital murder. *Riley v. State*, 447 S.W.3d 918, 922 (Tex. App.—Texarkana 2014, no pet.). In this case, the underlying felony was aggravated robbery. A person commits aggravated robbery if he "(1) causes serious bodily injury to another; (2) uses or exhibits a deadly weapon; or (3) causes bodily injury to another person or threatens or places another person in fear of imminent bodily injury or death, if the other person is: (A) 65 years of age or older; or (B) a disabled person." TEX. PENAL CODE ANN. § 29.03.

B. Law on Causation of Death

Texas law on causation 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. "Cause of death can be established both by expert medical testimony, see *Barrera v. State*, 756 S.W.2d 884, 885

(Tex. App.—San Antonio 1988, pet. ref'd), and by circumstantial evidence.” *Barcenes v. State*, 940 S.W.2d 739, 745 (Tex. App.—San Antonio 1997, pet. ref'd) (citing *Hines v. State*, 515 S.W.2d 670, 673 (Tex. Crim. App. 1974)). Inconsistencies between a defendant’s version of events and the medical evidence concerning how an injury must have been inflicted can be circumstantial evidence of guilt. See *Loserth v. State*, 985 S.W.2d 536, 541–42 (Tex. App.—San Antonio 1998, pet. ref'd) (holding evidence factually sufficient to support murder conviction based in part on evidence that defendant initially lied to the police as to his whereabouts on the night of the murder).

III. ANALYSIS

In his sole issue, Davila argues the evidence is insufficient to uphold a verdict for capital murder. While Davila appears to concede that he had a “clear, pre-meditated intent to steal [Herrera’s] truck,” he contends the “evidence failed to show that [Davila’s] assault committed during this robbery was the fatal act that caused [Herrera’s] death.” Davila claims that the State failed to introduce evidence that contradicted what Davila said happened—that although he assaulted Herrera, he left him “alive and conscious.”

Viewing the evidence in the light most favorable to the verdict, we disagree. The jury heard Samantha testify that when Davila picked her up from her foster home the night of January 28, 2018, he had blood on his neck, chest, hands, and pants. She recalled Davila admitted that he killed a man for his vehicle. San Antonio police officers found Herrera’s phone and wallet in the bedroom where she and Davila were staying. Officers also found a pair of Davila’s pants which were bloody.

During Davila’s testimony, he acknowledged being under the influence of

marijuana the night he went to ask Herrera for a ride to San Antonio to see his girlfriend. Davila also openly confessed that he beat Herrera on the face and head when Herrera refused to give him a ride and that he “knew how to fight.” Davila stated that he assaulted Herrera, a sixty-nine-year old man, for ten or twenty minutes until Herrera finally collapsed. Then, Davila claimed he used this “opportunity” to continue to kick, knee, and punch Herrera.

Detective Daniel testified that he believed Herrera was killed in front of his house and then dragged to the back of the property, where his body was found stashed underneath the home. His opinion was supported by aerial video and photographs which showed a trail of blood and dirt on the property, as well as a pool of blood. Furthermore, Daniel stated that officers recovered a bloody metal weight bar adjacent to the Herreras’ property.

Dr. Dana testified that Herrera’s manner of death was blunt force face and head trauma and strangulation. She opined that Herrera was likely severely beaten with an object. She noted seventeen facial injuries—his left forehead brow bone, cheekbones, jaw, and nose were fractured. She also reported that his teeth were loosened. She agreed with the State that certain crescent or semicircular divots in Herrera’s face could be consistent with someone smashing him with the end of a bar or pipe. She did not believe that these injuries had been made by human hands.

We conclude that a rational fact finder could have found the essential elements of capital murder beyond a reasonable doubt based on the evidence and reasonable inferences from that evidence. See *Whatley*, 445 S.W.3d at 166; *Jackson*, 443 U.S. at

319. The jury, as the sole judge of the credibility of the witnesses and of the weight to be given to their testimony, resolved the inconsistencies in the evidence in favor of the verdict. *Ramsey*, 473 S.W.3d at 808; *Wesbrook*, 29 S.W.3d at 111. Here, we presume the jury did not give weight to Davila’s version of what occurred—that he beat Herrera with his hands and left him alive. Instead, the jury could have reasonably relied on the other witnesses’ testimony that Davila beat Herrera with a weapon and that this caused his death. We conclude the circumstantial evidence is sufficient to prove Davila caused Herrera’s death. We overrule Davila’s sole issue.

IV. CONCLUSION

We affirm the trial court’s judgment.

LETICIA HINOJOSA
Justice

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

Delivered and filed the
27th day of August, 2020.