

NO. 12-11-00021-CR

IN THE COURT OF APPEALS

TWELFTH COURT OF APPEALS DISTRICT

TYLER, TEXAS

JOHN JACOB PRESLEY,
APPELLANT

§

APPEAL FROM THE 420TH

V.

§

JUDICIAL DISTRICT COURT

THE STATE OF TEXAS,
APPELLEE

§

NACOGDOCHES COUNTY, TEXAS

MEMORANDUM OPINION

John Jacob Presley appeals his conviction for murder. In his sole issue on appeal, Appellant argues that the evidence is legally insufficient to support his conviction. We affirm.

BACKGROUND

Appellant was charged by indictment with the offense of murder, a first degree felony.¹ Appellant was also charged with the offense of aggravated assault, but the State abandoned this count of the indictment prior to jury selection. At trial, Appellant pleaded “not guilty,” and the case proceeded to a jury trial.

At trial, Danny Ray Wallace testified that on the morning of December 17, 2009, he discovered a dead body in the area known as Beach Creek, Nacogdoches County, Texas. Investigator Michael Richard Claude, the captain of the criminal investigation division of the Nacogdoches County Sheriff’s Department, testified that the body was identified as Stephanie Presley. An autopsy showed that Presley died from a gunshot wound to the head. Claude also testified that investigators with his office found a shell casing from a 7.62x25 caliber weapon near

¹ See TEX. PENAL CODE ANN. § 19.02 (b)(1), (2), (c) (West 2011).

the crime scene. Appellant's stepfather testified that on December 13, 2009, two gun cabinets containing several guns were stolen from his house, including a 7.62x25 caliber Yugoslavian Tokarev.

According to Claude, Presley's estranged husband, Appellant, was identified as a possible suspect. The investigation revealed that Presley obtained a temporary protective order against Appellant in 2007 to prevent further violence against her, that Presley's coworkers and friends stated Presley was sometimes afraid of Appellant, and that Appellant used Presley's bank debit card on December 16, 2009. Tom Davis, a Texas Ranger with the Texas Department of Public Safety, stated that he investigated Presley's death and testified that text messages from Presley's cellular telephone indicated that she and Appellant were together on December 16, 2009. He also testified that Presley's stepmother stated Appellant had been threatening Presley. Further, Davis testified that after an arrest warrant was issued for Appellant, he notified officials at the border crossings. According to Davis, Appellant was stopped and held in Laredo, Texas, after attempting to enter the United States from Mexico.

Appellant's ex-wife, Rona Wallace, testified that in December 2009, Presley and Appellant were having marital problems and discussed their problems with her. Appellant also told Wallace that he wanted a divorce, but that Presley "would never divorce him, so he was just going to kill her instead." Charlotte Mallow, Appellant's girlfriend, testified that Appellant told her he intended to kill Presley, but he made the threat so often that Mallow and her family stopped taking him seriously. Mallow admitted that she and Appellant stole a gun cabinet and guns from Appellant's stepfather. On December 16, 2009, Appellant told Mallow that he was going to Nacogdoches to sell the guns. Mallow testified that Appellant returned to her house very early on December 17, 2009, and told her that he had killed Presley. She also admitted that she and Appellant fled to Mexico, and that they were arrested at the border crossing in Laredo, as they attempted to return to the United States.

Appellant testified that he and Presley had been married approximately four years. He stated that in December 2009, he and Presley were separated, but still saw each other. However, he was also in a relationship with Mallow at that time. Appellant stated that he gave the guns that he and Mallow stole to Presley and that she disposed of them. He also testified that he and Presley met again later on December 16, 2009, and traveled to Beach Creek. He stated that Presley had kept one of the stolen guns for herself, and that he saw it on her side of the vehicle. While Presley

was by a fire they had built, Appellant returned to the vehicle and retrieved the gun to see if Presley would engage in sexual role play with it. He testified that he approached Presley with the gun and as he lifted it, the gun “went off.” Appellant testified that he “did not intentionally shoot” Presley, but admitted that he was in the process of pointing the gun at her head when it discharged. He also admitted fleeing to Mexico with Mallow after the incident.

At the conclusion of trial, the jury found Appellant guilty and assessed his punishment at imprisonment for life and a \$10,000 fine.² This appeal followed.

EVIDENTIARY SUFFICIENCY

In his sole issue, Appellant argues that the evidence is legally insufficient to support his conviction. Specifically, Appellant contends that the evidence is legally insufficient because he did not intentionally or knowingly kill Presley.

Standard of Review

Legal sufficiency is the constitutional minimum required by the Due Process Clause of the Fourteenth Amendment to sustain a criminal conviction. *See Jackson v. Virginia*, 443 U.S. 307, 315-16, 99 S. Ct. 2781, 2786-88, 61 L. Ed. 2d 560 (1979); *see also Escobedo v. State*, 6 S.W.3d 1, 6 (Tex. App.—San Antonio 1999, pet. ref’d). The standard for reviewing a legal sufficiency challenge is whether any rational trier of fact could have found the essential elements of the offense beyond a reasonable doubt. *See Jackson*, 443 U.S. at 310, 99 S. Ct. at 2789; *see also Johnson v. State*, 871 S.W.2d 183, 186 (Tex. Crim. App. 1993). The evidence is examined in the light most favorable to the verdict. *See Jackson*, 443 U.S. at 319, 99 S. Ct. at 2789; *Johnson*, 871 S.W.2d at 186. A successful legal sufficiency challenge will result in rendition of an acquittal by the reviewing court. *See Tibbs v. Florida*, 457 U.S. 31, 41-42, 102 S. Ct. 2211, 2217-18, 72 L. Ed. 2d 652 (1982). This familiar standard gives full play to the responsibility of the trier of fact to resolve conflicts in the testimony, to weigh the evidence, and to draw reasonable inferences from the basic facts to ultimate facts. *See Jackson*, 443 U.S. at 319, 99 S. Ct. at 2789.

Under this standard, we may not sit as a thirteenth juror and substitute our judgment for that of the fact finder by reevaluating the weight and credibility of the evidence. *See Dewberry v. State*, 4 S.W.3d 735, 740 (Tex. Crim. App. 1999); *see also Brooks v. State*, 323 S.W.3d 893, 899

² An individual adjudged guilty of a first degree felony shall be punished by imprisonment for life or for any term of not more than ninety-nine years or less than five years and, in addition, a fine not to exceed \$10,000. *See* TEX. PENAL CODE ANN. § 12.32 (West 2011).

(Tex. Crim. App. 2010) (plurality opinion). Instead, we defer to the fact finder's resolution of conflicting evidence unless the resolution is not rational. See *Brooks*, 323 S.W.3d at 899-900; *Clayton v. State*, 235 S.W.3d 772, 778 (Tex. Crim. App. 2007). The duty of a reviewing court is to ensure that the evidence presented actually supports a conclusion that the defendant committed the crime charged. See *Williams v. State*, 235 S.W.3d 742, 750 (Tex. Crim. App. 2007).

The sufficiency of the evidence is measured against the offense as defined by a hypothetically correct jury charge. See *Malik v. State*, 953 S.W.2d 234, 240 (Tex. Crim. App. 1997). Such a charge would include 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.*

Applicable Law

To support Appellant’s conviction for murder as alleged in the indictment, the State was required to prove that Appellant intentionally or knowingly caused Presley’s death. See TEX. PENAL CODE ANN. § 19.02(b)(1) (West 2011). Circumstantial evidence is as probative as direct evidence in establishing the guilt of an actor, and circumstantial evidence alone can be sufficient to establish guilt. See *Hooper v. State*, 214 S.W.3d 9, 13 (Tex. Crim. App. 2007). Intent may be inferred from circumstantial evidence such as acts, words, and the conduct of the accused. *Guevara v. State*, 152 S.W.3d 45, 50 (Tex. Crim. App. 2004). Intent to kill also may be inferred from the use of a deadly weapon. *Smith v. State*, 56 S.W.3d 739, 745 (Tex. App.–Houston [14th Dist.] 2001, pet. ref’d). A firearm is a deadly weapon per se. See TEX. PENAL CODE ANN. § 1.07(a)(17) (West Supp. 2011) (including “firearm” in definition of deadly weapon); *Boyett v. State*, 692 S.W.2d 512, 517 (Tex. Crim. App. 1985). While flight alone will not support a guilty verdict, evidence of flight from the scene of a crime is a circumstance from which an inference of guilt may be drawn. *Valdez v. State*, 623 S.W.2d 317, 321 (Tex. Crim. App. 1979) (op. on reh’g). In other words, evidence of flight evinces a consciousness of guilt. *Clay v. State*, 240 S.W.3d 895, 905 n.11 (Tex. Crim. App. 2007).

Analysis

Here, Appellant denied that he intentionally shot Presley and said he was uncertain how the gun discharged. According to Appellant, he returned to his vehicle and retrieved the gun to see if Presley would engage in sexual role play with it. He testified that he approached Presley with the

gun and as he lifted it, the gun “went off.” But other, and more compelling, evidence supports a contrary finding.

Although Appellant testified that he “did not intentionally shoot” Presley, he admitted he was in the process of pointing the gun at her head when it discharged. The gun was a deadly weapon. Wallace testified that Appellant told her he intended to kill Presley because she would never divorce him. Appellant also told Mallow and her family that he intended to kill Presley and made this threat so often that they stopped taking him seriously. Moreover, Appellant told Mallow that he killed Presley, but he never stated that it was an accident. Finally, Appellant admitted that he fled with Mallow to Mexico immediately after Presley was killed, allowing the jury to infer that he was guilty. See *Clay*, 240 S.W.3d at 905 n.11; *Valdez*, 623 S.W.2d at 321.

The credibility of witnesses is for the jury’s determination, and the jury was free to disbelieve Appellant’s version of the incident. See *Brooks*, 323 S.W.3d at 899-900. Having examined the aforementioned evidence in the light most favorable to the verdict, we conclude that the jury could have determined beyond a reasonable doubt that Appellant intended to cause Presley’s death. Therefore, we hold that the evidence is legally sufficient to support his conviction for murder. See *Jackson*, 443 U.S. at 310, 99 S. Ct. at 2789; *Johnson*, 871 S.W.2d at 186. Accordingly, Appellant’s sole issue is overruled.

DISPOSITION

Having overruled Appellant’s sole issue, we *affirm* the trial court’s judgment.

BRIAN HOYLE

Justice

Opinion delivered February 29, 2012.

Panel consisted of Worthen, C.J., Griffith, J., and Hoyle, J.

(DO NOT PUBLISH)



**COURT OF APPEALS
TWELFTH COURT OF APPEALS DISTRICT OF TEXAS
JUDGMENT**

FEBRUARY 29, 2012

NO. 12-11-00021-CR

JOHN JACOB PRESLEY,

Appellant

V.

THE STATE OF TEXAS,

Appellee

Appeal from the 420th Judicial District Court
of Nacogdoches County, Texas. (Tr.Ct.No. F1017393)

THIS CAUSE came to be heard on the appellate record and briefs filed herein, and the same being considered, it is the opinion of this court that there was no error in the judgment.

It is therefore ORDERED, ADJUDGED and DECREED that the judgment of the court below **be in all things affirmed**, and that this decision be certified to the court below for observance.

Brian Hoyle, Justice.

Panel consisted of Worthen, C.J., Griffith, J., and Hoyle, J.