NO. 12-11-00359-CR

IN THE COURT OF APPEALS

TWELFTH COURT OF APPEALS DISTRICT

TYLER, TEXAS

JOHNSON WALTER BURRIS, APPELLANT	***§***	***APPEAL FROM THE 294TH***
V.	***§***	***JUDICIAL DISTRICT COURT***
THE STATE OF TEXAS, APPELLEE	***§***	***VAN ZANDT COUNTY, TEXAS***

MEMORANDUM OPINION

Johnson Walter Burris appeals his conviction for murder. In four issues, Appellant argues that he received ineffective assistance of counsel, that the evidence is insufficient to support his conviction, and that the trial court abused its discretion by admitting expert testimony. We affirm.

BACKGROUND

Diane Hopson's adult daughter visited her the morning of November 18, 2007. Diane told her that she was going to spend the day mowing the pasture at her house and that Appellant, an acquaintance of hers who lived nearby, was going to come over to work on her riding lawnmower. Diane was to babysit her daughter's children that evening, but she did not arrive at her daughter's house. The next day, Diane's daughter went to her mother's house to try to find her. She did not find her, but both of her mother's vehicles were present at the house, as was her purse and other personal items. The house was in an undisturbed condition.

Not finding her mother, Diane's daughter called the sheriff's office to report her missing. A deputy came to the residence. He was unable to find Diane, but he did discover a large quantity of blood on the back porch. That blood was later determined to be Diane's. Her blood was also

found on the tailgate and in the cab of Appellant's truck. Drops of Appellant's blood were found inside her house.

A Van Zandt County grand jury indicted Appellant for the felony offense of murder. Appellant pleaded not guilty, and a trial was held. The jury found Appellant guilty. Appellant elected to have the trial court assess punishment. Following a sentencing hearing, the trial court assessed a sentence of imprisonment for life. This appeal followed.

INEFFECTIVE ASSISTANCE OF COUNSEL

In his first and second issues, Appellant argues that trial counsel was ineffective during his trial.

Applicable Law

Claims of ineffective assistance of counsel are evaluated under the two step analysis articulated in ***Strickland v. Washington***, 466 U.S. 668, 104 S. Ct. 2052, 80 L. Ed. 674 (1984). The first step requires an appellant to demonstrate that trial counsel's representation fell below an objective standard of reasonableness under prevailing professional norms. *See* ***Strickland***, 466 U.S. at 688, 104 S. Ct. at 2065; ***McFarland v. State***, 928 S.W.2d 482, 500 (Tex. Crim. App. 1996). Counsel's representation is not reviewed for isolated or incidental deviations from professional norms, but on the basis of the totality of the representation. *See* ***Strickland***, 466 U.S. at 695, 104 S. Ct. at 2069.

The second step requires the appellant to show prejudice from the deficient performance of his attorney. *See* ***Hernandez v. State***, 988 S.W.2d 770, 772 (Tex. Crim. App. 1999). To establish prejudice, an appellant must show that there is a reasonable probability that the result of the proceeding would have been different but for counsel's deficient performance. *See* ***Strickland***, 466 U.S. at 694, 104 S. Ct. at 2068.

We begin with the strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance. *See* ***Jackson v. State***, 877 S.W.2d 768, 771 (Tex. Crim. App. 1994). As part of this presumption, we presume counsel's actions and decisions were reasonable and were motivated by sound trial strategy. *See* ***id***. Appellant has the burden of proving ineffective assistance of counsel. *See* ***id***.

We review the denial of a motion for new trial for an abuse of discretion. *See* ***Holden v.***

State, 201 S.W.3d 761, 763 (Tex. Crim. App. 2006); ***Charles v. State***, 146 S.W.3d 204, 208 (Tex. Crim. App. 2004). A trial court abuses its discretion in denying a motion for new trial only when no reasonable view of the record could support the trial court's ruling. ***Holden***, 201 S.W.3d at 763.

Analysis

Appellant identifies several areas in which he argues counsel's representation fell below professional norms. He asserts that counsel failed to investigate defenses, failed to advance available defensive theories, failed to call witnesses, failed to hire investigators or experts, failed to object to a defective charge and to the prosecutor's improper arguments, failed to seek to suppress his statements to the police, failed to have an examination done to determine whether he was competent, and failed to introduce evidence in mitigation of punishment including issues related to his mental health. Appellant presented these arguments in a motion for new trial. Following a hearing, the trial court denied Appellant's motion for new trial.

Counsel's Duty to Investigate and to Advance Defensive Theories

A broad swath of these claims fail for lack of evidence. With respect to the claims that counsel failed to investigate, to advance defensive theories, to hire professionals to assist, and to investigate or advance issues relating to Appellant's mental health, there is no evidence to show what evidence counsel should have uncovered or what he should have presented. Generally, in cases where a defendant challenges trial counsel's failure to call a witness or present evidence, it is necessary to show that such witnesses or evidence is available and relevant to consideration of the verdict. *See, e.g.*, ***Perez v. State***, 310 S.W.3d 890, 894 (Tex. Crim. App. 2010) ("[T]he 'failure to call witnesses at the guilt-innocence and punishment stages is irrelevant absent a showing that such witnesses were available and appellant would benefit from their testimony.'") (quoting ***King v. State***, 649 S.W.2d 42, 44 (Tex. Crim. App. 1983)); ***Butler v. State***, 716 S.W.2d 48, 55 (Tex. Crim. App. 1986); ***Johnston v. State***, 959 S.W.2d 230, 236 (Tex. App.–Dallas 1997, no pet.). Specifically, and with respect to failing to seek appointment of an expert witness, this court has held that to show prejudice, an appellant must show that an expert would have testified in a manner that would be beneficial. *See* ***Brown v. State***, 334 S.W.3d 789, 803 (Tex. App.–Tyler 2010, pet. ref'd) (citing ***Cate v. State***, 124 S.W.3d 922, 927 (Tex. App.–Amarillo 2004, pet. ref'd)); *see also* ***Teixeira v. State***, 89 S.W.3d 190, 194 (Tex. App.–Texarkana 2002, pet. ref'd).

A hearing was held on Appellant's motion for new trial. No exhibits or evidence were

admitted. Appellant called his sister and trial counsel as witnesses. His sister testified that she was prepared to testify at trial that Appellant was with Diane Hopson at Diane's home at 4:30 p.m. the day she went missing and at his own home at 5:30 p.m. that same day. As the State points out, this is not evidence that tends to exonerate Appellant. Instead, it places Appellant close to the victim near the time she went missing. A suggestion could be made that Appellant would not have had time to kill Diane and dispose of her body between 4:30 and 5:30 pm. But the evidence suggested that the victim was killed and taken away from the scene in Appellant's truck, and it would be reasonable for counsel to choose not to highlight, and not to provide an additional witness to corroborate, the fact that Appellant was the last person known to be with Hopson while she was alive.

With respect to the hiring of experts or further investigation into the facts of the case or into Appellant's background, Appellant simply failed to demonstrate what those experts could have testified to or what an investigation would have uncovered. The investigation undertaken by counsel must be evaluated from the perspective of the leads available to him. In ***Ex parte Briggs***, 187 S.W.3d 458, 467 (Tex. Crim. App. 2005), for example, trial counsel failed to hire an investigator or expert because his client did not provide him with funds to conduct such an investigation. The court held that counsel did not make a reasonable professional judgment not to hire expert witnesses and that the defendant was prejudiced because evidence admitted after the conviction was sufficient to undermine the court's confidence in the outcome of the trial. ***Id***. at 469–70. By contrast, in this case, trial counsel did obtain funding from the trial court for an investigator, though he did not use the funds, and Appellant has failed to introduce evidence showing that counsel's failure to investigate this case further resulted in there being useful evidence that was not uncovered or introduced. On appeal, Appellant suggests that trial counsel should have investigated further the conclusions of the State's DNA experts, should have challenged their conclusions generally, and should have challenged the proposition that DNA material from the victim's hair brush and tooth brush were her own. Again, Appellant has failed to show that these courses of action were necessary or that they would have yielded useful information.

Appellant's Competency to Stand Trial

With respect to the issue of Appellant's competency, there was no evidence that reasonably suggested Appellant was incompetent. Trial counsel testified that he was unaware of any

suggestion that Appellant lacked competency to stand trial. Appellant asserts that there is evidence in the record to suggest that he suffers from schizophrenia. His support for this is a citation to the motion for new trial hearing where he asked trial counsel if the presentence investigation contained statements that he might have schizophrenia. Counsel did not recall those statements. The presentence report was not included in the appellate record. We ordered the report. It does not contain a conclusion or suggestion that Appellant has been diagnosed with schizophrenia or any mental disease. It does state that he was in special education classes in high school and that his employment history ended in 2008 when he became disabled.

This evidence does not suggest that Appellant was incompetent.[1] And Appellant has not shown that his attorney should have, but failed to, uncover information that was important to his defense. *See* ***Conrad v. State***, 77 S.W.3d 424, 427 (Tex. App.–Fort Worth 2002, pet. ref'd) (counsel not ineffective when no evidence adduced to show that defendant was insane at the time of the offense); *see also* ***Wilkerson v. State***, 726 S.W.2d 542, 551 (Tex. Crim. App. 1986) ("Absent evidence to the contrary, the attorneys did not disserve appellant by failing to request a competency hearing prior to trial.").

Jury Charge

Appellant also argues that counsel should have objected to the charge given to the jury. The indictment charged that Appellant committed the offense of murder "in a manner and by means unknown to the Grand Jury." The jury charge repeated this language. Citing ***Sanchez v. State***, PD-0961-07, 2010 Tex. Crim. App. LEXIS 1242 (Tex. Crim. App. Oct. 6, 2010), Appellant argues that counsel should have objected to this language in the charge because the State's theory was that Hopson was killed by being struck by an object and the manner and means were not unknown. The ***Sanchez*** opinion was replaced by another opinion after Appellant submitted his brief. In the second opinion, the court held that the submission of an "unknown manner-and-means theory" was error because the State's expert in that case testified that the cause of death was "asphyxia," but he limited it to two specific causes: asphyxia by strangulation or asphyxia "caused by stun gun." ***Sanchez v. State***, PD-0961-07, 2012 Tex. Crim. App. LEXIS 692, at *16 (Tex. Crim. App. May 16, 2012). There was error in that case because the charge presented more than those two theories to

[1] In his first statement to the police, Appellant made reference to some mental health issues from his past and some abuse he suffered as a child. Appellant did not present any evidence at the motion for new trial hearing of mental health issues that should have been uncovered by his lawyer.

the jury. ***Id***., at *16-17.

In this case, there is no testimony analogous to the expert's testimony in ***Sanchez***.[2] Hopson's body was not recovered and a plausible murder weapon was not found. A large quantity of her blood was found on the back patio. The police also found marks indicating that her body was dragged to a place on the driveway. And no one had heard from Diane in the years between the day she went missing and the trial. These facts all led to the conclusion that she was killed that day on her patio, but the manner and means of her death remained unknown. Accordingly, the trial court would not have erred in overruling an objection to the charge on the basis that an unknown manner and means instruction was inappropriate.

Prosecutor's Closing Argument

Appellant argues that counsel should have objected to part of the prosecutor's closing argument. During closing argument, the prosecutor made the following statement to the jury:

> I think after hearing the evidence, there is strong, strong beyond a reasonable doubt that we will ever find the body of Diane Hobson because [Appellant] is not going to tell us. There is strong reasonable doubt about finding the murder weapon that took Diane Hobson's life because [Appellant] is not going to tell us about it.[3]

Appellant's counsel did not object to these statements. At the motion for new trial hearing, counsel stated that he probably should have objected. Appellant argues that this argument was an invitation to consider "Appellant's silence" against him.

Commenting on a defendant's failure to testify violates his state and federal constitutional privileges against self-incrimination. *See* ***Archie v. State***, 340 S.W.3d 734, 738 (Tex. Crim. App. 2011) (citing ***Canales v. State***, 98 S.W.3d 690, 695 (Tex. Crim. App. 2003); ***Bustamante v. State***, 48 S.W.3d 761, 764 (Tex. Crim. App. 2001)). A comment on the failure to testify occurs when argument is advanced that "was manifestly intended or was of such a character that the jury would

[2] Though Appellant does not address it, the investigator testified that there were marks which indicated to him that a hammer was used to strike the victim. There was a hammer in the house, but he testified it was not used to strike the victim. He also could not say that a hammer was the only weapon used to strike the victim or that it resulted in the injuries that caused her death.

[3] In his argument, the prosecutor juxtaposed questions about which there could be a reasonable doubt, such as where Diane's body was, with questions he argued about which there was not a reasonable doubt, such as that Appellant was responsible for her murder.

necessarily and naturally take it as a comment on the defendant's failure to testify." ***Archie***, 340 S.W.3d at 738 (quoting ***Cruz v. State***, 225 S.W.3d 546, 548 (Tex. Crim. App. 2007)). An attorney may be ineffective if he fails to make an objection that it would have been error for the trial court to overrule. *See* ***Ex parte Martinez***, 330 S.W.3d 891, 901 (Tex. Crim. App. 2011) ("To successfully assert that trial counsel's failure to object amounted to ineffective assistance, the applicant must show that the trial judge would have committed error in overruling such an objection.").

It is not clear that the trial court would have erred in overruling Appellant's objection to this statement if he had made it. In ***Archie***, the prosecutor asked a rhetorical question only the defendant could answer, a question about the defendant's "present state of mind as he sat in the courtroom," and did so while pointing and stepping towards the defendant. ***Archie***, 340 S.W.3d at 738. The court held that the jury could only have construed the statement as an invitation to consider the defendant's failure to testify. ***Id***.

In this case, it was the State's theory that only Appellant could tell where Diane's body could be found. Therefore, the line of argument as presented in closing argument was risky because it invited the jury to conclude that Appellant had information that he did not disclose. On the other hand, Appellant had made pretrial statements denying involvement in the Hopson's murder. Therefore, the argument by the prosecutor could reasonably be understood to be a deduction from the evidence that the reason the body could not be produced for the jury is because Appellant had secreted it and denied involvement. In other words, the comment could fairly be understood as a comment on Appellant's statement denying involvement and not a comment on Appellant's invocation, either pretrial or at trial, of his right to remain silent.

As the court made clear in the ***Cruz*** decision, it is not "sufficient that the language might be construed as an implied or indirect allusion [to the failure to testify.]" ***Cruz***, 225 S.W.3d at 548. Rather, it must be "manifestly intended" to be a comment on the failure to testify or something that would "necessarily and naturally take it as a comment on the defendant's failure to testify." ***Id***. The present tense nature of the argument–"not going to tell us"–was not only unnecessary, but it needlessly brought the focus to the day of trial and to the forbidden inference that Appellant was doing something wrong by not testifying. But in context, the trial court could have reasonably concluded that this comment was not intended to be a comment on Appellant's failure to testify and that the jury could take it as a comment on Appellant's failure to provide accurate information in his

statements to the police. Accordingly, counsel was not ineffective for failing to make an objection.

Motion to Suppress Appellant's Statements to the Police

We also hold that counsel was not ineffective for failing to seek to suppress Appellant's three pretrial statements to the police. Counsel stated that he did not object because he thought the statements were "res gestae." It is not immediately clear what counsel meant by this, but Appellant must show that a motion to suppress would have been successful in order to show that his attorney did not provide reasonable professional assistance. *See* ***Jackson v. State***, 973 S.W.2d 954, 957 (Tex. Crim. App. 1998). Appellant argues that counsel did not investigate whether Appellant's statement was made voluntarily and asserts that counsel thought Appellant has "low functioning intelligence," which should have factored into that analysis. This is not a showing that a motion to suppress would have been granted, and there is no evidence in the record to show that the statement was made involuntarily. We have reviewed the recordings of Appellant's three statements to the police. It appears that the constitutional prerequisites to taking admissible statements were satisfied, and we cannot conclude that counsel was ineffective for not filing a motion to suppress.

Concession by Counsel

Appellant also argues that counsel waived a critical defense by conceding that Diane Hopson was dead. The Supreme Court has held that conceding an issue, even that the defendant is guilty, may, in the appropriate case, present a question of trial strategy. *See* ***Florida v. Nixon***, 543 U.S. 175, 192, 125 S. Ct. 551, 562, 160 L. Ed. 2d 565 (2004) (concession of guilt as part of strategy in capital case where guilt was clear can be reasonable strategic choice). On the other hand, an unnecessary concession of the important issues in a case can be an abdication by counsel. *See, e.g.*, ***United States v. Swanson***, 943 F.2d 1070, 1075–76 (9th Cir. 1991).

Counsel testified that he thought it was reasonable, given the amount of blood found at the site where Diane was presumed to have been killed and the fact that she had not been heard from for several years, to concede that she was likely dead. Under the circumstances, this was a reasonable course of action. Counsel did not concede the entire case, and his concession of an obvious fact may well have strengthened his credibility when he argued that the evidence was insufficient to allow the conclusion that Appellant was responsible for her murder. Accordingly, counsel's strategic decision to concede that Diane was dead was not outside the wide range of acceptable professional representation.

Election for Punishment

Finally, Appellant argues that counsel's decision to elect to have the trial court assess punishment meant that he could not make an "argument to the sympathies of a jury that Appellant's denial of guilt was consistent with the fact that he did not attempt to leave and avoid prosecution during the years leading up to the trial." In fact, counsel did address at the punishment hearing Appellant's performance while on bond for several years prior to the trial. At the motion for new trial hearing, counsel testified that he thought it was a reasonable course of action to allow the judge to assess punishment because the judge had, in his mind, acted fairly and impartially when she reduced a bond that had been set at $1,000,000. There is no indication that Appellant did not agree with counsel's recommendation to waive trial by jury for the punishment phase. And there is no indication that the strategic decision or the recommendation to do so was outside the bounds of reasonable representation.

Conclusion

In conclusion, Appellant has failed to show that counsel's representation fell below professional norms or that the trial court abused its discretion in overruling his motion for a new trial. With respect to objections not made, Appellant has failed to show that the objections would have been sustained. He has also failed to show that counsel's investigation did not uncover helpful information or that there was evidence not presented or witnesses not called who would have added to the defense. Finally, counsel's strategic decisions to concede a relevant fact or to elect or to recommend that the trial court assess punishment have not been shown to have been detrimental to the defense or to be outside the zone of reasonable professional assistance. Because the trial court did not err in overruling Appellant's motion for new trial, we overrule Appellant's first and second issues.

SUFFICIENCY OF THE EVIDENCE

In his third issue, Appellant argues that the evidence was insufficient to support the verdict.

Applicable Law

The due process guarantee of the Fourteenth Amendment requires that a conviction be supported by legally sufficient evidence. *See* ***Jackson v. Virginia***, 443 U.S. 307, 315–16, 99 S. Ct. 2781, 2786–87, 61 L. Ed. 2d 560 (1979); ***Brooks v. State***, 323 S.W.3d 893, 917 (Tex. Crim. App.

2010) (plurality opinion). Evidence is not legally sufficient if, when viewing the evidence in a light most favorable to the verdict, no rational trier of fact could have found the essential elements of the offense beyond a reasonable doubt. *See* ***Jackson***, 443 U.S. at 319, 99 S. Ct. at 2789; *see also* ***Rollerson v. State***, 227 S.W.3d 718, 724 (Tex. Crim. App. 2007). Under this standard, a reviewing court does not sit as a thirteenth juror and may not substitute its judgment for that of the fact finder by reevaluating the weight and credibility of the evidence. *See* ***Brooks***, 323 S.W.3d at 899; ***Dewberry v. State***, 4 S.W.3d 735, 740 (Tex. Crim. App. 1999). Instead, a reviewing court defers to the fact finder's resolution of conflicting evidence unless that resolution is not rational in light of the burden of proof. *See* ***Brooks***, 323 S.W.3d at 899–900. The duty of a reviewing court is to ensure that the evidence presented actually supports a conclusion that the defendant committed the crime. *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). A hypothetically correct jury charge "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 is tried." ***Id.***

As charged in the indictment, the State had to show that Appellant did intentionally or knowingly cause the death of Diane Hopson or that, with the intent to cause serious bodily injury to Diane Hopson, he committed an act clearly dangerous to human life that caused her death. *See* TEX. PENAL CODE ANN. § 19.02(b)(1), (2) (West Supp. 2011).

Analysis

A large quantity of Diane's blood was found on her back porch. There were drag marks that suggested her body had been pulled from the back of the house to the driveway, and her blood was found on the tailgate of Appellant's pickup truck and inside his truck. Appellant's blood was found inside her house. Appellant was the last person known to have been with the deceased.

Appellant argues that it is simply too great a "leap" for the jury to conclude that he committed a murder or that he was a party to a murder, although he also argues that the lack of adversarial testing of the State's evidence meant that "no other outcome but a guilty verdict could have been expected." Appellant did challenge the State's case, and there were some issues for him

to raise. For example, the DNA of a third and unknown person was also found on the tailgate of the truck, and there was a shoeprint in the blood at the house that was never linked to Appellant or to anyone else. Additionally, a neighbor who had been close to Diane unexpectedly sold his property and moved out of state shortly after she went missing. Appellant admitted being present the afternoon Diane went missing, but the jury heard his repeated denial of having anything to do with her disappearance. Finally, the fact that Diane was dead and that Appellant had a role in her death was not shown by direct evidence.

Appellant's counsel raised these issues with the jury. Under the circumstances, and after careful review of the record, we hold that the jury's conclusion that Appellant had responsibility for the murder of Diane Hopson was supported by the evidence and a rational jury could conclude beyond a reasonable doubt that Appellant was guilty. The quantity of blood reasonably suggests that she was killed on the back porch. Taken with the unexplained presence of her blood on Appellant's truck along with his admission that he had controlled the truck and the timeline of when Diane had last been seen, the evidence is sufficient for the jury to conclude that Appellant was guilty of this offense. We overrule Appellant's third issue.

EXPERT TESTIMONY

In his fourth issue, Appellant argues that the trial court erred in allowing one of the State's witnesses to offer opinion testimony that Diane was likely killed on the back patio of her house.

Expert Testimony and Skilled Witnesses

We review a trial court's decision to admit or exclude expert testimony for an abuse of discretion. *See* ***Ellison v. State***, 201 S.W.3d 714, 723 (Tex. Crim. App. 2006). A trial court abuses its discretion when its decision lies outside the zone of reasonable disagreement. *See* ***Casey v. State***, 215 S.W.3d 870, 879 (Tex. Crim. App. 2007).

An expert is qualified to offer an opinion by knowledge, skill, experience, training, or education if that opinion is based on scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue. TEX. R. EVID. 702. Pursuant to Rule 702, the trial court, before admitting expert testimony, must be satisfied that three conditions are met: (1) whether the field of expertise is a legitimate one, (2) whether the subject matter of the expert's testimony is within the scope of that field, and (3) whether the expert's

testimony properly relies upon or utilizes the principles involved in the field. *See* ***Morris v. State***, 361 S.W.3d 649, 654 (Tex. Crim. App. 2011).

Testimony

The prosecutor asked the forensic examiner if he drew any conclusions about what had occurred at Diane's home after a lengthy discussion about what the investigator had observed and collected at the scene. The investigator stated that, based on his experience and training with blood evidence, he was able to determine that the victim received injuries that "start[ed] a large volume of blood flow" in or close to a specific area on the patio. He concluded that she "then collapsed on the patio" in another location nearby the original area. He stated that the victim remained in that second location "for some period of time long enough to bleed out or to bleed a significant volume of blood." The victim was then moved away from that area toward the driveway and loaded into a vehicle at the point where the blood trail ended. There was a washing machine on the patio, and he was able to identify a "contact transfer stain" on the washing machine that was "consistent with someone's blood-soaked hair having contact with that machine all in a wet state." It was his opinion that the blood loss indicated by the stains that remained on the patio "would cause someone's death had they not obtained immediate medical treatment."

On cross examination, the examiner testified that a typical human has five liters of blood. He testified that the loss of thirty percent of a person's blood would likely be fatal without medical intervention. He also testified that he had conducted experiments with blood and the quantity of blood on the patio would be consistent with the loss of enough blood to cause a death. He conceded that he could not tell exactly how much blood was lost.

Analysis

Appellant argues that the trial court erred in allowing the forensic investigator to testify that "the amount of loss of blood was the cause of death of the victim." Appellant did not contest at trial that the investigator was an expert in the field of "blood spatter collection" and "crime scene construction." He did object to "medical conclusions about a death occurring as a result of blood that's at the scene."

The investigator testified that he received training during both an intermediate and advanced "bloodstain" class and at "SWAT sniper school" about "blood loss as it relates to death." As we understand the investigator's testimony and his testimony about his qualifications, he was offering

that he was able to make a gross analysis of the likely outcome of the kind of blood loss indicated by what he observed on the patio of Diane's home. The investigator did not suggest that he could approximate precisely the amount of blood lost, or that he could have made a conclusion about the possible outcome if there had been less blood lost. Furthermore, he testified that he had some training in the area of blood loss as an indicator of death, but he did not suggest that he had any training in the approximation of the outcomes for the loss of smaller amounts of blood loss.

The investigator consistently described the amount of blood loss on the patio as "massive" and stated, in response to a question, that he was not offering a "guesstimation" as to precisely how much blood was lost. In terms of offering an opinion about the probable outcome of a loss of blood indicated by the stains he found on the patio, we hold that the trial court did not abuse its discretion. The investigator had training in the area of conclusions to be drawn from blood loss. Appellant does not argue that such conclusions are unscientific. Furthermore, the investigator was not offering an opinion that was on the edge of or beyond his expertise, as for example a precise approximation of the quantity of blood lost, but a more centered opinion that "massive" blood loss he saw evidence of was likely fatal. There was support in the record that he had the training and expertise to offer that opinion. We overrule Appellant's fourth issue.

DISPOSITION

Having overruled Appellant's four issues, we ***affirm*** the judgment of the trial court.

JAMES T. WORTHEN
Chief Justice

Opinion delivered August 30, 2012.
Panel consisted of Worthen, C.J., Griffith, J., and Hoyle, Jr.

(DO NOT PUBLISH)

COURT OF APPEALS
TWELFTH COURT OF APPEALS DISTRICT OF TEXAS
JUDGMENT

AUGUST 30, 2012

NO. 12-11-00359-CR

JOHNSON WALTER BURRIS,
Appellant
V.
THE STATE OF TEXAS,
Appellee

Appeal from the 294th Judicial District Court
of Van Zandt County, Texas. (Tr.Ct.No. CR08-00113)

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.

James T. Worthen, Chief Justice.
Panel consisted of Worthen, C.J., Griffith, J., and Hoyle, J.