Affirmed and Opinion filed January 10, 2002.

In The

Fourteenth Court of Appeals

NO. 14-00-00937-CR

MELVIN CHARLES PAUL, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the 174th District Court
Harris County, Texas
Trial Court Cause No. 844,969

O P I N I O N

Over his plea of not guilty to a jury, appellant Melvin Charles Paul was convicted of capital murder and sentenced to life in the Texas Department of Criminal Justice, Institutional Division. Appellant brings three issues on appeal: The trial court erred in denying his motion for mistrial because the jury deliberated for approximately 14 hours in the guilt-innocence phase of the trial, and as such, the verdict was coerced; and the evidence against him is legally and factually insufficient to sustain a conviction for capital murder. We affirm the judgment of the trial court.

FACTS ADDUCED AT TRIAL

Testimony of Officer Fabian Lee:

On July 30, 1999, Houston Police Officer Fabian Lee was dispatched to appellant's apartment. Officer Lee arrived at 7:16 a.m. Appellant was very emotional and talked a lot, and Officer Lee could not understand what he was saying, that is, until he said that somebody had been killed. Officer Lee asked where the body was located, and appellant showed him to the back bedroom of the apartment ("master bedroom"). There, Officer Lee saw the victim: a black female lying on the bed with a dress pulled up over her face and naked from the waist down. She was not moving, and there was blood on the bed sheets. Houston Fire Department personnel arrived, and the woman was pronounced dead. The victim was later identified as Debra Scott (complainant). Officer Lee asked appellant what his relationship was with the complainant, and appellant replied that she was a good friend.

Appellant's Version of the Events as Told to Officer Lee

When asked what happened, appellant explained that he had gone to the grocery store that morning, and when he returned to the apartment, the complainant's ex-boyfriend Dennis was leaving the apartment, at which time the two men exchanged pleasantries. Appellant described Dennis as a white older male, possibly in his 60's, with a very small build. During the course of the questioning, however, appellant changed his description of Dennis two times: first he was described as white, then as black, and finally as white again.

Appellant told Officer Lee that after Dennis left the apartment, he retired to the living room, and after five or ten minutes, he went to check on the complainant, but found the master bedroom door locked. He retrieved a coat hanger from another room and unlocked the door. It was at this time, he stated, that he first realized complainant was dead. Officer Lee asked appellant what time it was when he went to the grocery store. Appellant could not remember, nor could he tell Officer Lee if it was dark or light outside when he left for the store, or what he intended to buy (or bought) at the store.

Testimony of Officer Justin C. Wood:

Houston Police Officer Wood of the Crime Scene Unit, Homicide Division, was dispatched to appellant's apartment. Officer Wood took several photographs of the complainant and the interior and exterior of appellant's apartment. There was no indication of any forced entry into the apartment or any of the interior doors of the apartment. Officer Wood's photographs, State's exhibits 1-20, 22-44, and 54, and his diagram of the scene, were admitted into evidence. Using his diagram, Officer Wood testified that appellant's master bedroom wall, where complainant's body was found, was a shared wall with another apartment. The lessee of that apartment, Joyce Williams, testified as a witness for the State, *infra*.

Officer Wood testified that when he first entered the master bedroom, he did not touch the complainant's body or move any of her clothing. Officer Wood saw blood on the carpeting, which appeared to be leading toward the sink area just outside the bathroom. The blood stains closest to the sink appeared to be diluted, and Officer Wood took samples of them. He photographed a broken gold chain on the floor. He testified that complainant was partially covered by blood-stained sheets; her dress was pulled up away from her waist, and it appeared to have blood stains and other bodily fluids on it; there was blood coming from her mouth; there was bruising around her neck, and other places; and there appeared to be hemorrhaging of the small blood vessels in the eye, known to be consistent with manual strangulation. Officer Wood also saw "white tissue-type material"–like residue that is left behind after the use of a facial tissue–in complainant's hair, in her pubic hair and in appellant's hair and facial hair. One of Officer Wood's photographs, State's exhibit 22, shows a wad of white tissue-type material in appellant's hand and on his pant leg. Officer Wood testified that this material was consistent with the white tissue-type material recovered from complainant's body.

Testimony of Officer G.J. Novak:

Houston Police Sergeant Gerry Novak, a twenty-year veteran of the Homicide Division, was assigned to investigate "a possible homicide." He arrived at appellant's apartment at 8:35 a.m. Officer Novak noted the condition of complainant's body and concluded that a sexual assault had occurred. Officer Novak conferred with Officer Lee and then began to question appellant.

Appellant's Version of Events as Told to Officer Novak:

Appellant appeared nervous as he spoke. He explained to Officer Novak what happened that evening: that complainant telephoned him from a bar on Bissonnet, saying that a man named Dennis was stalking and harassing her; that she wanted appellant to send a cab for her, which he did; and that complainant had fallen asleep shortly after she arrived at his apartment. Appellant explained that he allowed complainant to come to his apartment so that she would be safe, as Dennis did not know where appellant lived.

Appellant also told Officer Novak the following: that after the complainant arrived at appellant's apartment, she received several phone calls from Dennis; that they argued bitterly over the phone; that appellant retired alone to another bedroom ("middle bedroom") to read the Bible, and thereafter he fell asleep; that he got up the next morning to go to the grocery store, saw that the door to the master bedroom was closed, and yelled from outside the door to complainant that he was going to the store; that when he returned from the store, there was a tall, slender black male in his 60's, presumably Dennis, inside his apartment getting ready to leave. Dennis and appellant simply exchanged greetings. After the man left, appellant explained, he called out to the complainant from the living room informing her that he had returned, sat down on the couch, and watched television. There was no response from the bedroom, so he became concerned about complainant, tried to enter the locked master bedroom, and opened the door with a coat hanger. Appellant saw

complainant lying on the bed, checked her for a heartbeat by placing his ear against her chest, felt beneath her nostrils to see if she was breathing, and called for an ambulance.

Appellant denied that he had sexual relations with complainant, saying that he was a preacher, that he and complainant were only friends, and that he had only offered complainant a safe place to stay for the night.

Inconsistencies in Appellant's Version of the Events:

Officer Novak noted that appellant could not have checked complainant's heartbeat and breathing as he claimed because the bottom portion of complainant's dress was pulled up over the top of her head when the paramedics and Officer Lee first found her body. Because appellant offered differing descriptions of Dennis, Officer Novak stopped the questioning and allowed appellant to organize his thoughts before continuing. The following facts were either added or changed in appellant's second version of the events as told to Officer Novak: that once complainant arrived at the apartment, she and appellant drank beer and talked at the kitchen table; that after complainant cursed at Dennis over the phone, they engaged in intercourse, went to the bathroom to clean themselves, returned to the kitchen, and drank more beer. When the beer ran out, appellant went to buy more beer. Appellant first walked to a corner store, but it was closed; then he walked to a Kroger, which was a mile away, but it was too late to purchase beer. He then returned to the apartment and finding that complainant had passed out in the master bedroom, engaged in intercourse with her two more times. He said complainant never awoke.

Appellant then retired to the middle bedroom alone and fell asleep. He woke up before daybreak, yelled out to complainant that he was going to Kroger, left the apartment, and, forgetting something, returned, opened the front door using a key, and saw a white male (presumably Dennis) who was on his way out. After saying good morning to Dennis, appellant sat down on the couch, turned on the television, and called to complainant to tell her that he had returned.

Suspicious of appellant's changing version of the events, Officer Noavak read appellant his rights and transported him to the police station where appellant consented to provide samples for DNA testing and made a written statement.[1] Initially, appellant acknowledged in the statement that he fabricated the story about Dennis, stating that he did not want the police to think badly of him; but after reading the statement and before signing it, he crossed out that sentence.

Officer Novak met with and took a written statement from Dennis Shaffer, complainant's ex-boyfriend. Officer Novak described Dennis as a white male about 60 years old, who weighs about 90 lbs., uses a walker, chain smokes, has difficulty breathing, and has very limited mobility.

Testimony of Joyce Williams:

Joyce Williams lived in the same apartment complex as appellant at the time of the murder. Her apartment bedroom shares a wall with appellant's apartment–the back wall of the master bedroom where complainant's body was found. Williams testified that she heard voices coming from appellant's apartment at about 4:00 a.m. on July 30. She was annoyed at being awakened, so she checked the time, sat on the edge of her bed, and listened to the voices coming through the wall. She testified that she clearly heard a male voice. He was cursing; specifically, she heard the words "mother-f---ing b----" at least three times. She could not say, however, that the male voice she heard that night was the same male voice she ordinarily heard coming from the adjacent apartment. In addition to the male voice, Williams testified that she heard a female screaming, and at the same time a banging noise, like someone was repeatedly beating the wall. While the female screamed, the male voice continued to curse. Williams testified that the screaming and banging continued for several

[1] Appellant's written statement was admitted into evidence as State's exhibit # 56. The statement includes additional information: that appellant's girlfriend, Evelon, stopped by after he and complainant had sex the first time; that Evelon was angry at finding appellant with another woman; that Evelon left, although appellant tried to get her to stay; that when he realized complainant was dead, he shook her very hard, trying to get her to wake up, and thereafter called his mother, who recommended that he call the police.

minutes. Williams went into another part of her apartment to get ready for work, and once she returned to her bedroom, she heard nothing for awhile. But at 5:30 a.m., as Williams was crossing through her front living room to leave for work, she heard a loud male voice repeat the words, "I love you" several times. She did not hear a female voice at that time.

On cross-examination, Williams testified that she had called the police several times in the past complaining of loud music coming from appellant's apartment, but on this occasion she did not call, and she did not suspect that anyone was being killed at the time. She also admitted that she was not familiar with appellant's voice.

Testimony of Lolinda Lewis Morrison:

Complainant and Morrison were roommates. Morrison was allowing complainant and her children to live at her home temporarily. Morrison testified that complainant had visited Dennis[2] the day before the murder, but that complainant left by taxi to go to appellant's apartment at about 11:30 p.m. that night. Complainant told Morrison that she would not be spending the night there.[3]

Testimony of Dennis Schaefer:

Dennis Schaefer is a disabled, 61 year-old white male who lives on social security. His disability stems from an injury several years ago when he broke a leg and a hip that had been broken before. He described his leg as "useless basically" and uses a wheelchair, a cane, or a walker to get around.

Schaefer testified that he had known complainant for about 20 years; that they were girlfriend and boyfriend; that they had sexual relations, but they did not see each other

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[2] Morrison described Dennis as a 65 year-old white male, a "good friend" of complainant's, who had known complainant about 20 years, and that he is friendly and kind-hearted, considerate, and talkative. Physically, however, he is "very thin," frail, has difficulty getting around, uses a walker, and smokes heavily. Morrison had no personal knowledge of whether Dennis and complainant had sexual relations.

[3] Complainant had told Morrison on a previous occasion that she was not interested in appellant sexually.

exclusively; that she visited and spent the night at his house frequently; and that they talked over the phone at least once a day.

Schaefer denied seeing complainant on July 30th; rather, he testified that she came to his house on the 28th, spent the night, and left the next day at about 3:00 p.m. At about 2:00 p.m. on the 29th, complainant and Schaefer left his apartment and stopped to meet a friend of Schaefer's at a bar on Bissonnet where both complainant and Schaefer were regular customers. Complainant used the pay phone to call a cab, and Schaefer visited with his friend. Schaefer testified that he and complainant did not quarrel or bicker while at the bar, and the cab came for her in about five minutes.

Schaefer testified that after complainant left the bar, he never saw her again, but she telephoned him several times that night asking to come over: at approximately midnight, 12:30 a.m., and 12:50 a.m. Schaefer testified that neither he nor complainant were angry or spoke angrily over the telephone, and that he did not know that complainant was calling from appellant's apartment until the next morning when Schaefer checked his caller-ID. He saved the caller-ID entries for the police investigation. He testified that he never met appellant, he did not know where appellant lived, and he was only familiar with appellant's name from conversations with complainant and the caller-ID entries that read Reverend Melvin Paul.

Appellant's Trial Testimony:

Appellant testified in his own behalf at trial. He claimed to be 41 years old, unemployed and on social security disability for blindness. Appellant is able to see large objects, but testified that "everything is a blur." He also stated that he "cannot tell what color anybody is." Appellant characterized his relationship with complainant as a "close friend, girlfriend, drinking buddy," and "dancing buddy." He testified that he had sexual relations with her at least 10 to 15 times over the last two years.

Appellant testified that between 2:00 p.m. and 3:00 p.m. on July 29th, complainant called him from the Outback Tavern. She was distressed because "a man was over there messing with her" and "she wanted to get away from him." Appellant testified that "[s]he sounded real threatened" and "insisted" that appellant send a cab for her, which ultimately, he did. She arrived at his apartment at about 4:00 p.m. with two six packs of malt liquor. She thanked him, gave him a hug, and they drank the malt liquor at the kitchen table. Complainant made several telephone calls to Dennis. She cursed him in a loud tone of voice. Appellant encouraged complainant to calm down. Eventually, complainant turned on the radio, and she danced with appellant. They were dancing, talking and laughing for a while, and then they had sex. After having sex, they cleaned themselves in the restroom, and at about 9:00 p.m., complainant went home to check on her children. Complainant telephoned him later, asked to come over, and appellant sent another cab for her.

Appellant testified that complainant arrived with some drinks and a bag of clothes and intended to stay the night. Once she arrived, she made and received several phone calls. Thereafter, appellant's girlfriend Evelon arrived at the apartment unannounced, opened the door, saw complainant, and became angry. Evelon and complainant started arguing for a minute or two. Evelon began to cry and left the apartment. Appellant followed her to her car. In a loud voice, he repeatedly told Evelon that he loved her and urged her to come back inside. Appellant denied using any expletives; rather, appellant testified that he got in Evelon's car and they talked peacefully. Eventually, appellant got out of the car and went back to his apartment. Evelon drove away. When appellant walked in the door, he said that complainant was holding a screwdriver, presumably to attack or defend herself against Evelon. Appellant assured complainant that Evelon was gone, took the screwdriver from complainant's hand, and tossed it toward the sink.

Without locking the door to the apartment, appellant then walked to the store for more beer.[4] Finding the corner store closed, he bought $5 or $10 worth of crack cocaine and returned to his apartment. Upon his return home, he saw "a shadow" going out of his apartment, but he could not tell if the shadow was that of a black or a white man. Once inside, he found the master bedroom door closed, and went in the middle bedroom to smoke the crack cocaine.[5] Appellant then had another beer and read the Bible. He then became concerned about complainant and went to check on her. The door was locked from the inside, so he opened it by inserting a coat hanger in the small hole on the doorknob, saw complainant lying on the bed, got in bed with her, tried to wake her up, and performed oral sex on her. Complainant did not respond or move, so appellant had sex with her. Afterward, however, appellant "noticed something wasn't right," that there was a large amount of blood on his hand. He panicked, went to the sink, washed his hands, and "tried to clean up the stuff off me with a rag." Appellant also tried to clean complainant with the same rag.

Appellant testified that he did not remember what he did next, but eventually, he telephoned his mother and told her complainant was dead. Because he had been smoking crack, he waited awhile to call the police, explaining that he "thought they might arrest [me] for that." Appellant admitted telling several different versions of the events to the several officers, but he testified that he did not know the officers were writing down his words. He further testified that he made a written statement at the police station, but complained that he "didn't say all that stuff on there."

On cross-examination, appellant admitted that he never told any of the investigating officers about buying the crack cocaine. Appellant explained this omission: "Man, had me under pressure with interrogation and stuff, threatening to lock me up for whatever, and

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[4] Appellant estimated that he was gone about an hour or an hour-and-a-half.

[5] On cross-examination, appellant testified that he could not remember if he went out to buy crack once or twice.

stuff, if I don't say this or that. So I was doing the best I could. I was nervous." When asked if he lied to Officer Novak about the lack of sexual contact with complainant, appellant explained that "I didn't know what was going on. . . . I didn't lie to him like that." When questioned about the inconsistency involving the "shadow" (as told on the stand), and the story of the white or black male intruder named Dennis (as told in varying details to the investigating officers), appellant explained, "I know that was a person I seen. I might have been confused." Appellant further explained that he did not think it was unusual for Dennis, who he acknowledged by name but could not see, to be leaving his apartment in the early morning hours. Additionally, appellant testified that he did not sodomize complainant, that he never told Officer Novak that he had, and that Officer Novak must have lied about that in appellant's written statement.

When asked whether appellant yelled outside the apartment, "You f---ing b----" at his girlfriend, Evelon, as she was leaving, he answered affirmatively, but claimed that he was outside Williams' window at the time and implied that the cursing Williams heard that night must have been when he was screaming at Evelon. The prosecutor pointed out, however, that Williams heard the cursing and banging against her wall at around 4:00 a.m. and Evelon left the apartment complex at about 2:00 a.m. Appellant also claimed that the voices Williams heard coming through the wall at 5:30 a.m. repeating, "I love you" were in fact words he told Evelon while outside at 2:00 a.m.

Testimony of Evelon Roberts:

The State called one rebuttal witness: appellant's girlfriend, who came to the apartment in the early morning hours of July 30. Evelon testified that she met appellant through a dating service, and initially, they "got along fine." However, Evelon testified that appellant drank "big time," and he experienced personality changes and became "evil" when he drank.

At approximately 12:30 a.m., Evelon drove to the apartment and knocked on the door. Appellant let her in, and she saw complainant sitting at the kitchen table. Complainant told Evelon not to be upset, explaining that she and appellant were only friends. But, because appellant was entertaining another woman at his apartment at 12:30 a.m., Evelon told appellant that she wanted to end their relationship. Evelon said that appellant then "hollered at me, cursed me, [and] called me names," specifically, "b----" and "prostitute." At about 1:00 a.m., Evelon left the apartment, and appellant followed her outside, cursed at her some more, and called her a "b----." Evelon walked towards her car. Apparently, appellant had a sudden change of heart and called out to Evelon. He asked her to stay and told her that he loved her. Evelon got in her car and allowed appellant to sit in the car with her. Evelon claimed that appellant told her, "[I] hit you once and that didn't work. [I am] going to see what happen[s] next." Appellant got out of the car, and Evelon drove home.

The Physical Evidence:

DNA found on several bed linens from the master bedroom were consistent with both complainant and appellant. A stain found on the bedspread showed a mixture of DNA from both complainant and appellant. An autopsy was performed on complainant's body and the cause of death was listed as manual strangulation. In addition to other indications of assault, there was damage to the brain caused by some sort of blunt force trauma to the head. In all, seventeen autopsy photographs were introduced into evidence.

THE JURY DELIBERATIONS

In appellant's first issue on appeal, he contends that his motions for mistrial during jury deliberations should have been granted, and the trial court's failure to do so unlawfully coerced the jury to reach a guilty verdict. For the reasons stated below, we disagree.

Jury deliberations took place over the course of two days. On the first day, the jury deliberated from about 10:30 a.m. until 7:00 p.m., with a one-hour lunch break. At about

5:45 p.m., the presiding juror sent a note stating that ten jurors were voting for guilt, and two jurors were not convinced the State had met its burden. The trial court urged the jury to continue its deliberations, and appellant moved for his first mistrial. Appellant complained in his motion that the jury had already deliberated as long as it took to present the trial testimony, and forcing the jurors to continue would compromise the verdict. The trial court denied appellant's motion.

Without noting the date or time, the presiding juror sent a second note on the evening of the first day of deliberations, stating that the two unconvinced jurors "are adamant that they cannot be convinced otherwise" and in the presiding juror's belief, "they will never be persuaded." He summed up his note with the following: "Regrettably, the jury is hung." The trial instructed the jury to continue deliberating. At about 6:50 p.m., appellant made a second motion for mistrial. The trial court denied appellant's motion and sequestered the jury for the evening.

Deliberations resumed at 9:20 a.m. the next morning, and, at that time, the trial court submitted an Allen charge to the jury.[6] An entry in the record shows that sometime during the second day of deliberations, the jury requested a "flip chart and a marker." At approximately 4:00 p.m. that day, appellant moved for a third mistrial, complaining that any further deliberation would coerce the jurors to change their decisions. The trial court denied appellant's third motion for mistrial, and approximately one hour later the jury announced a verdict of guilty.

[6] A trial court sends an "Allen charge" to the jury in an attempt to break a deadlock. *Allen v. United States*, 164 U.S. 492, 17 S.Ct. 154, 41 L.Ed. 528 (1896). The charge informs the jurors that the consequences of a hung jury is a mistrial, that jurors at retrial would be faced with essentially the same decision, and encourages the jurors to try to resolve their differences without coercing one another. *Torres v. State*, 961 S.W.2d 391, 393 n.1 (Tex. App.—Houston [1st Dist.] 1997, pet. ref'd).

LENGTH OF JURY DELIBERATION

There is no set time limit for jury deliberation. *Green v. State*, 840 S.W.2d 394, 407 (Tex. Crim. App. 1992). The court may grant a mistrial if it determines that the jurors have been kept together for such a time as to render it altogether improbable that they can agree, TEX. CODE CRIM. PROC. ANN. art. 36.31 (Vernon 1981), *Montoya v. State*, 810 S.W.2d 160, 166 (Tex. Crim. App. 1989), but the trial court need not enter a mistrial at the first sign of juror impasse. *Howard v. State*, 941 S.W.2d 102, 121 (Tex. Crim. App. 1996). The length of time a jury deliberates rests within the sound discretion of the trial court, and absent an abuse of discretion, no reversible error is shown. *Montoya*, 810 S.W.2d at 166. Unless the record reveals that the trial court abused its discretion in holding the jury for deliberations, reversal is not required. *Id.*

When reviewing the trial court's decision, we consider the length of the trial and amount of evidence presented to the jury. *Howard*, 941 S.W.2d at 121. That is, we consider the amount of time the jury deliberates in light of the nature of the case and the evidence admitted, *Patterson v. State*, 598 S.W.2d 265, 268 (Tex. Crim. App. 1980), how long the jury was deadlocked, and whether the margin of disagreement had changed during the course of deliberations. *Bynum v. State*, 598 S.W.2d 265, 907 (Tex. App.—Houston [1st Dist.] 1994, pet. ref'd) (citing *Beeman v. State*, 533 S.W.2d 799, 800 (Tex. Crim. App. 1976)).

DISCUSSION

In the two days the jury was out, the jurors deliberated approximately 14 hours–almost twice as long as it took to present the evidence at trial. And, according to the notes in the record, the jury was deadlocked for half the time it deliberated. Also, until the jury reached its verdict, there was nothing in the record to show that any of the jurors had changed their positions since the end of the first day. Nevertheless, considering the nature of the case, we cannot say, in light of the length of the trial and the time the jurors may have

spent in deadlock, that the trial court abused its discretion in overruling appellant's motions for mistrial. Moreover, during the second day of deliberation, the jury did not inform the court of a continuing deadlock, and the request for the flip chart and marker indicated active jury deliberation. In light of these facts, a trial court could reasonably conclude that it was not altogether improbable that the jury would render a verdict. Lastly, we have examined a number of cases concerning the length of jury deliberation and have found none that would require us to overrule the trial court's decision to hold the jury for fourteen hours in this case.[7] Accordingly, we overrule appellant's first issue on appeal.

STANDARD OF REVIEW

Appellant complains in his second and third issues on appeal that the evidence against him is legally and factually insufficient to support a conviction for capital murder. We disagree.

We apply different standards when reviewing the evidence for factual and legal sufficiency. When reviewing the legal sufficiency of the evidence, this court must view the evidence in the light most favorable to the prosecution and determine whether any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. *Jackson v. Virginia*, 443 U.S. 307, 319, 99 S.Ct. 2789, 61 L.Ed.2d 560 (1979); *Garrett v.*

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[7] Andrade v. State, 700 S.W.2d 585, 589 (Tex. Crim. App. 1985) (allowing jury to deliberate for twelve hours in a capital murder trial was not an abuse of discretion), *cert. denied*, 475 U.S. 1112, 106 S.Ct. 1524, 89 L.Ed.2d 921 (1986); *Garcia v. State*, 522 S.W.2d 203, 208-09 (Tex. Crim. App. 1975) (holding that no undue coercion was shown by holding jury for eight and one-half hours in capital murder trial, even though the jury twice indicated deadlock), *abrogated on other grounds, Leday v. State*, 983 S.W.2d 713 (Tex. Crim. App. 1998); *Willis v. State*, 761 S.W.2d 434, 438 (Tex. App.—Houston [14th Dist.] 1988, pet. ref'd) (thirteen hours in capital murder trial, when guilt-innocence phase of trial lasted only five hours, was not an abuse of discretion); *Burnett v. State*, 754 S.W.2d 437, 448 (Tex. App.—San Antonio 1988, pet. ref'd) (holding jury for approximately 21 and one-half hours was not abuse of discretion in capital murder case involving eight days of testimony from approximately thirty witnesses, even though jury twice indicated that it was deadlocked); *Matthews v. State*, 163 S.W. 725-26 (Tex. Crim. App. 1914) (holding that trial court did not abuse its discretion in holding jury in murder trial from 4:30 p.m. on May 21st until 10:30 a. m. on the 23rd); *Matthews v. State*, 691 S.W.2d 2, 5 (Tex. App.—Beaumont 1984), *aff'd*, 708 S.W.2d 835 (1986) (holding that trial court did not abuse its discretion in keeping jury for ten hours in capital murder case where seventeen witnesses testified and 49 exhibits were admitted into evidence).

State, 851 S.W.2d 853, 857 (Tex. Crim. App. 1993). This standard of review applies to cases involving both direct and circumstantial evidence. *King v. State*, 895 S.W.2d 701, 703 (Tex. Crim. App. 1995). On appeal, this court does not reevaluate the weight and credibility of the evidence, but we consider only whether the jury reached a rational decision. *Muniz v. State*, 851 S.W.2d 238, 246 (Tex. Crim. App. 1993).

In reviewing factual sufficiency challenges, appellate courts must determine "whether a neutral review of all the evidence, both for and against the finding, demonstrates that the proof of guilt is so obviously weak as to undermine confidence in the jury's determination, or the proof of guilt, although adequate if taken alone, is greatly outweighed by contrary proof." *Johnson v. State*, 23 S.W.3d 1, 11 (Tex. Crim. App. 2000). That is, a factual sufficiency review dictates that the evidence be viewed in a neutral light, favoring neither party. *Clewis v. State*, 922 S.W.2d 126, 134 (Tex. Crim. App. 1996). In this neutral light, the appellate court reviews the jury's weighing of the evidence and is authorized to disagree with the jury's determination. *Id*. at 133. Evidence is factually insufficient if (1) it is so weak as to be clearly wrong and manifestly unjust; or (2) the adverse finding is against the great weight and preponderance of the available evidence. *Johnson*, 23 S.W.3d at 11. The *Johnson* Court reaffirmed the requirement that "due deference must be accorded the fact finder's determinations, particularly those determinations concerning the weight and credibility of the evidence." *Id*. at 9. We are mindful, however, that due deference is not absolute deference. *Id*. at 7.

DISCUSSION

Appellant contends that while there is ample evidence to support sexual relations, there is no evidence to prove beyond a reasonable doubt that it was appellant who strangled complainant.

A person commits capital murder if he intentionally or knowingly causes the death of an individual in the course of committing aggravated sexual assault. TEX. PEN. CODE ANN. § 19.03(a)(2) (Vernon 1994).

There is no direct evidence that establishes appellant murdered complainant. Thus, the evidence showing that appellant strangled complainant is largely circumstantial. Nonetheless, when conducting a legal or factual sufficiency review, both direct and circumstantial evidence are weighed equally. *Brown v. State,* 911 S.W.2d 744, 745-46 (Tex. Crim. App. 1995). And, the jury is the sole judge of the witnesses' credibility and the weight to be given their testimony, and the jury may accept or reject all or any part of the testimony. TEX. CODE CRIM. PROC. ANN. ART. 38.04 (Vernon 1979). Moreover, the jury is entitled to draw reasonable inferences from circumstantial evidence to ultimate facts. *Jackson*, 443 U.S. at 319, 99 S.Ct. at 2789, 61 L.Ed.2d at 573. And, it is the jury's responsibility to resolve conflicts in the testimony. *Id*.

Legal Sufficiency of the Evidence

Looking at the evidence in the light most favorable to the jury's verdict, we find the evidence legally sufficient to uphold a conviction for capital murder. Complainant was found raped and strangled in appellant's apartment. And, the following physical evidence supports a conclusion that appellant committed the murder and attempted to cover up the murder: the mixture of appellant's DNA with that of complainant; the lack of any third party DNA found at the scene after extensive DNA testing was performed on the bed clothes found beneath or near complainant's body; the white tissue-type residue found on both complainant and appellant; the diluted blood found on the basin; the broken jewelry found on the bedroom floor; and the lack of evidence of forced entry into the apartment or any of the apartment's interior doors.

Moreover, when questioned by the investigating officers, appellant seemed very nervous, distracted, and his speech was erratic. He gave inconsistent versions of the events

to different officers, and at least three times he gave conflicting stories to the same officer. The conflicts in appellant's stories involved virtually every aspect of the events. At trial, he gave even more conflicting facts.

In addition, the jury could have drawn an inference of appellant's guilt from (1) Williams' testimony, the neighbor who heard the screaming, cursing, and banging coming from appellant's apartment; (2) the testimony of Evelon and Morrison, placing defendant at the apartment during the hours of the murder; (3) Evelon's characterization of appellant's character change while drinking which may have contributed to a conclusion of his guilt; (4) Dennis' testimony that he last saw complainant at a bar on Bissonett the day before her murder and that he and complainant were not at odds with one another–neither quarreling at the bar nor over the phone; and (5) Dennis' frail heath and diminutive stature, which would have prevented him from committing the acts that caused complainant's death.

In short, we find that a rational trier-of-fact could have found the essential elements of a capital murder to convict appellant beyond a reasonable doubt, and we overrule appellant's legal sufficiency complaint. *Lane v. State*, 933 S.W.2d 504, 507 (Tex. Crim. App. 1996).

Factual Sufficiency of the Evidence

We now consider appellant's factual sufficiency challenge and examine the evidence in a neutral light, favoring neither party. *Johnson*, 23 S.W.3d at 6. In addition to the facts supporting the conviction, the following evidence was introduced at trial: appellant's claim that his blindness is so severe that he cannot discern a person's race; appellant's testimony implicating Dennis in the murder of complainant; appellant's claim that Dennis was stalking and harassing complainant; that Dennis and complainant argued bitterly over the telephone the night of the murder; that appellant left the apartment for about one and one-half-hours to buy beer and crack cocaine, and during that time, complainant stayed at his unlocked apartment; that the investigating officers fabricated most of appellant's written statement;

that the yelling and cursing Williams heard through the apartment wall was nothing more than appellant yelling at his girlfriend, Evelon; and that he lied to the investigating officers because they were interrogating him and threatened to lock him up unless he said "this or that."

In weighing these facts against the facts pointing to appellant's guilt, we cannot say that the evidence standing alone is so weak as to be clearly wrong and manifestly unjust. *Id*. at 11. And as the sole judge of the witnesses' credibility, the jury was free to accept or reject all or any part of the appellant's testimony. *Sharp v. State*, 707 S.W.2d 611, 614 (Tex. Crim. App. 1986), *cert. denied*, 488 U.S. 872, 109 S.Ct. 190, 102 L.Ed.2d 159 (1988). Apparently, the jury chose to believe the State's testimony and reject appellant's version of the events. Thus, we conclude that the evidence is factually sufficient to uphold the jury's verdict. Accordingly, we overrule appellant's third issue on appeal. The judgment of the trial court is affirmed.

/s/ Wanda McKee Fowler
Justice

Judgment rendered and Opinion filed January 10, 2002.
Panel consists of Chief Justice Brister and Justices Fowler and Seymore.
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