Affirmed and Opinion filed June 1, 2000.

In The

Fourteenth Court of Appeals

NO. 14-99-00721-CR

MICAH RAMON MCQUILLON, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the 209th District Court
Harris County, Texas
Trial Court Cause No. 803,158

O P I N I O N

Micah Ramon McQuillon appeals his conviction for murder. The jury assessed punishment of twenty-five years imprisonment. Appellant contends that: (1) the evidence was legally insufficient to sustain his conviction, and (2) because there was no proof the autopsy was performed by a licensed physician, the court abused its discretion when it admitted the autopsy report and photos into evidence, and allowed the medical examiner to testify about the autopsy. We affirm.

Facts

John Norris, the complainant, came to Houston to attend the graduation of the sister of his lifelong friend, Carl Green. After the ceremony, Norris and friends went out to celebrate. Later, they decided to meet another friend, Frederick, at an after-hours club. Norris drove his late-model red Cadillac into the parking lot of the club. Frederick arrived and got in the Cadillac. However, Norris, Green, and West told Frederick they were not going to stay at the club and, after a few minutes Frederick got out of the car. Norris and company then drove to the drive-thru of a nearby Whataburger.

Because it was so "clean," Norris' Cadillac caught the attention of Carpenter, appellant, his brother, and a man identified as "Pop." After observing Frederick come and go from the Cadillac so quickly, appellant and his friends believed the men in the car had just completed a drug deal. Appellant then paged Marcus Nealy and asked him to bring him some weapons. Nealy arrived and gave appellant a .45 automatic pistol. Appellant told Nealy he was planning on robbing the people in the Cadillac. Nealy and Carpenter drove in the green Suburban to a Texaco station adjoining the Whataburger. Appellant, his brother, and Pop drove there in a white car.

Carpenter stated that while walking to the Whataburger to eat, he saw appellant shoot Norris to death from behind the Cadillac. Nealy also testified that he saw appellant shoot Norris. Nealy's girlfriend, Evangeline Barfield, testified she had carried around the .45 pistol murder weapon for appellant, two months earlier.

Appellant points to the testimony of two other witnesses whom he claims implicates someone else as the shooter. Patricia Carter was working as a cashier inside the restaurant when the gunshots were fired. She was stunned. She saw the gunman outside, described as a man with a "beer belly." At the same time, Monica Iles was sitting in her car in the drive-thru. She told police she saw a man drive up in a white car, get out, and shoot Norris. Iles described the shooter as between 5'8" and 5'9", pudgy, with a big stomach.

In the courtroom, Iles indicated that appellant was several inches taller. She also stated that the description she had given to police did not fit the description of appellant. Appellant showed at trial that Carpenter weighed 295 pounds and had a "large stomach."

Appellant also showed that he was not incriminated for some two months after the shooting. Then, Nealy, who was serving a twenty-year drug sentence in federal prison, contacted the FBI to attempt to exchange incriminating testimony about appellant for a reduction of his sentence. The FBI refused to make a deal with Nealy but Nealy decided to give his testimony anyway. Finally, appellant called to testify an officer who had arrested Barfield and found the murder weapon in her possession. The officer also controverted earlier trial testimony Barfield made regarding who was in the car with her during the arrest.

During the State's case, it moved to introduce the autopsy report and photos through an assistant medical examiner, Dr. Patricia Moore, as business records under TEX. R. EVID. 803(6). Moore testified that she had worked with Dr. Marilyn Murr, who performed the autopsy, and stated she believed Dr. Murr was a competent medical examiner. Appellant took Moore on voir dire and ascertained Moore did not know where Murr graduated from medical school. Appellant then asked Moore how she knew Murr graduated from medical school and had a license. Moore replied she didn't know for sure. Appellant objected to the autopsy and any testimony about it because the State had not established the autopsy was performed by a licensed physician with authority to do it. The court overruled the objection and admitted the autopsy evidence.

Legal Sufficiency

Appellant first claims the evidence is legally insufficient to support his conviction. In reviewing legal sufficiency, we view the evidence in the light most favorable to the verdict to determine if a rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. *See Jackson v. Virginia,* 443 U.S. 307, 319, 99 S.Ct. 2781, 61 L.Ed.2d 560 (1979). Further, we must ignore evidence favorable to the appellant and view only the evidence favorable to the State. *See Obigbo v. State,* 6 S.W.3d 299, 306 (Tex. App.—Dallas 1999, no pet.). Where evidence both supports and conflicts with the verdict, we must assume that the factfinder resolved the conflict in favor of the verdict. *See Dunn v. State,* 13 S.W.3d 95, 97-98 (Tex. App.—Texarkana 2000, no pet. h.).

In this case, two eyewitnesses testified they saw appellant shoot Norris. Another witness testified appellant gave her the murder weapon after the crime. This is more than ample evidence to support the

verdict. Though appellant points to testimony suggesting some of the State's witnesses may have had a motive for not telling the truth, and there are other witnesses that testified that appellant may not have matched their description, we are bound to assume that the jury resolved any credibility issues or evidentiary conflicts in favor of the verdict. *See Dunn*, 13 S.W.3d at 97-98. Because the evidence raised by appellant is contrary to the verdict, it is not material to a legal sufficiency review. *See Obigbo*, 6 S.W.3d at 306.[1] We therefore overrule appellant's first issue.

Admission of the Autopsy Evidence

Next, appellant contends the court erred in admitting the autopsy report, photos and testimony pertaining to it because there was no evidence the person performing it was a licensed physician. We review the trial court's ruling on the admissibility of evidence under an abuse of discretion standard. *See Green v. State*, 934 S.W.2d 92, 101-02 (Tex. Crim. App.1996). We will not reverse such a ruling so long as it falls within the zone of reasonable disagreement. *See Montgomery v. State*, 810 S.W.2d 372, 391 (Tex. Crim. App.1990) (op. on reh'g). Further, error may not be predicated upon a ruling which admits or excludes evidence unless a substantial right of the party is affected. *See* TEX. R. EVID. 103(a); *see also* TEX. R. APP. P. 44.2(b).

The State offered the autopsy reports under TEX. R. EVID. 803(6) as a record of regularly conducted activity. Appellant only argues that the report and all evidence associated with it is unreliable because it was not proved the person who performed the autopsy was a physician. Records of regularly conducted activity are inadmissible if the "source of information or the method or the circumstances of preparation indicate lack of trustworthiness." *See* TEX. R. EVID. 803(6). We disagree that the State failed to sufficiently show Murr was a physician.

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[1] Appellant implies that Carter's and Iles' testimony implicated Carpenter as the shooter. Appellant, however, did not have either witness positively identify Carpenter as the shooter, despite the presence of all of them at trial. We also note that besides appellant's height, appellant has not pointed us to any place in the record establishing his other physical characteristics.

Clearly, Moore testified as a former colleague of Murr. As an assistant medical examiner herself, Moore stated that she was familiar with Murr's work and that, based on her experience with Murr, Moore knew her to be a competent assistant medical examiner. Further, the autopsy report is signed by "Marilyn G. Murr, M.D." as "Assistant Medical Examiner," under the letterhead of "The Office of the Medical Examiner of Harris County." This was all relevant evidence and probative of the fact that Murr was a physician and assistant medical examiner at the time she performed the autopsy. *See* TEX. R. EVID. 401. If appellant had some basis to show that Murr was posing fraudulently, that evidence would have been admissible to controvert the affirmative evidence of Murr's qualifications and thus, that the reports were in fact untrustworthy. However, appellant essentially only showed that Moore was not aware where Murr graduated from medical school.

Finally, appellant's issues pertaining to admissibility of the autopsy evidence fail because he has not even suggested how his substantial rights might have been affected by its admission. *See* TEX. R. EVID. 103(a); TEX. R. APP. P. 44.2(b). That complainant was dead as a result of a gunshot wound was hardly in dispute. We therefore hold the trial court did not abuse its discretion in admitting the autopsy report, photos, and expert testimony[2] pertaining to the autopsy.

Appellant's issues are overruled. The judgment of the trial court is affirmed.

/s/ Don Wittig
Justice

Judgment rendered and Opinion filed June 1, 2000.

[2] The expert Moore could also have testified from facts or data "reviewed by, or made known to the expert at or before the hearing." *See* TEX. R. EVID. 703.

Panel consists of Chief Justice Murphy and Justices Hudson and Wittig.

Do Not Publish — TEX. R. APP. P. 47.3(b).