Affirmed and Opinion filed June 14, 2001.

In The

Fourteenth Court of Appeals

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NO. 14-98-01450-CR

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STEVEN BERNARD CHAMBERS, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the 208th District Court
Harris County, Texas
Trial Court Cause No. 770,161

O P I N I O N

This is a murder case. A jury sentenced the Appellant to thirty-five years in the Texas Department of Criminal Justice, Institutional Division. On appeal, he contends the trial court should have excluded his out-of-court statements, and that the evidence is factually and legally insufficient to support his conviction. We affirm.

Factual Summary

Before dawn on November 30, 1997, a wrecker driver discovered a pickup truck stuck in the mud near a waste disposal site on a deserted stretch at 8700 Little York Road. The side of the truck and the inside of the driver's door were sprayed with mud, as if the driver had

attempted to get the truck free. The engine was running, and the passenger door was open. He reported a possible stolen vehicle to police. The patrol officer who responded to the call directed him to secure the vehicle for transport. The wrecker driver discovered wet blood in the truck when he started to close the passenger door.

The body had first been dragged into the brush and brambles near the pickup. Additional drag marks were visible leading from behind the pickup, across all four lanes and through the deep median ditch of Little York Road, to a shallower ditch on the opposite side of the road. Although not visible from the roadway, the complainant's body was lying face-down, feet protruding from the ditch. There was no evidence of sexual assault, but her pants were pulled down over her feet and a hooded sweatshirt was pulled up around her head.

The complainant had suffered strangulation, blunt trauma injury to the head and neck, and a .38 caliber gunshot wound to the head. She had lived perhaps half an hour after she was shot, and blood was pooled in the finger cavity of the passenger door handle.

The appellant's fingerprints and palm prints were found on the pickup truck door. Their position suggested grasping the door from the inside through the open window. When police came to his home before 6:00 a.m. the next day, appellant was unnaturally calm. Blood stains found on his clothes and matched the complainant's blood type, but not the appellant's. DNA tests on his shirts and pants were inconclusive because they had been washed, and residual blood was in his bathroom sink. Blood on his jacket provided a positive match to the complainant's DNA. Most of the blood on his pants was below the knees, and his pants were quite muddy. Wet, muddy athletic shoes were in his closet.

The police had obtained an arrest warrant and a warrant to search the address on the appellant's drivers' license. Officers found him living at a different address, about three miles from the crime scene. When police arrived at his home, the appellant consented in writing to a search of his home and his automobile. The appellant and the homicide officer who questioned him testified that appellant agreed to accompany the police to their station. He was not handcuffed.

At the station, the appellant had a Coke while officers interviewed him. When told he was placed at the murder scene, the appellant said he knew something about it. The officer interviewing him stopped him and had appellant read his rights aloud from a computer screen. Appellant then gave a voluntary oral and written statement, and signed a voluntary consent for police to take blood and hair samples. At the crime lab, he signed a second consent form for the samples. After the samples were taken, he returned to the homicide office where he had given the first statement, and gave a second oral and written statement. It had been about six hours since he first arrived at the station.

In both of his statements, the appellant stated he had found the pickup truck stuck, and had looked in the truck for items to steal. He stated he had only entered the truck on the driver's side. He explained that he only searched the passenger side by standing in the bed of the pickup, opening the door and reaching behind the seat. He did not get in the passenger side, he said, because the passenger door opened into the ditch.

At trial, he testified testified he encountered the truck while driving from a club, past his home, to a hamburger franchise.[1] Contrary to his out-of-court statements, he testified that he walked around to the passenger door and stood in a puddle while searching that side. While the officers testified they found blood in the sink, and his shirts and pants had been washed, the Appellant testified he had only thrown them on the floor in the towel closet. Further, he testified that he did not participate with anyone else in the crime or in dragging the body across the street.

Analysis

Statements Not Made Under Arrest

Although reading Appellant his rights and having him wait in a "holding room" after his first statement provide ground for surmise that he might be under arrest, the record clearly supports a finding that the Appellant went to the police station voluntarily, and was not under

[1] An investigator testified the same franchise had a restaurant on the same route, between the club and his home.

arrest when he gave his statements. As a result, his first four points on appeal claiming that he was arrested without a valid warrant, and that he was not taken before a magistrate are overruled.

Legal and Factual Sufficiency

When we are asked to determine whether the evidence is legally sufficient to sustain a conviction, we employ the standard of *Jackson v. Virginia* and ask "whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." 443 U.S. 307, 319, 99 S.Ct. 2781, 2789, 61 L.Ed.2d 560 (1979). When we determine whether the evidence is factually sufficient, we employ one of the two formulations recognized in *Johnson v. State*, 23 S.W.3d 1 (Tex. Crim. App. 2000). The evidence is viewed "in a neutral light, favoring neither party," without the prism of "in the light most favorable to the prosecution" that applies to legal sufficiency. *Id*. at 6. Attacking an adverse finding on an issue to which he did not bear the burden of proof, as here, the appellant must demonstrate there is insufficient evidence to support the adverse finding. *Id*. at 11. A reversal is necessary only if the evidence standing alone is so weak as to render the verdict clearly wrong and manifestly unjust. *Id.* at 8. The *Johnson* Court reaffirmed the requirement that in conducting a factual sufficiency review the appellate court must employ appropriate deference to avoid substituting its judgment for that of the fact finder. *Id***.** at 7.

For purposes of proving guilt beyond a reasonable doubt, direct and circumstantial evidence are equally probative. *McGee v. State*, 774 S.W.2d 229, 238 (Tex. Crim. App. 1989). The Supreme Court rejected the "outstanding reasonable hypothesis" theory once applied to circumstantial evidence in *Jackson v. Virginia*, and the Texas Court of Criminal Appeals banished it from Texas jurisprudence in *Geesa v. State*, 820 S.W.2d 154 (Tex. Crim. App. 1991). *Geesa*, like *Jackson*, recognized a uniform standard of proof applies to direct evidence or to circumstantial evidence, for a finding beyond a reasonable doubt. A "reasonable doubt" is a doubt based on reason and common sense after a careful and impartial consideration of all the evidence in the case. It is the kind of doubt that would make a reasonable person hesitate

to act in the most important of his own affairs. *Id.* at 162.

Under *Clewis v. State*, 922 S.W.2d 126, 133 (Tex. Crim. App.1996), a court of appeals reviews the factual sufficiency of the evidence when properly raised after a determination that the evidence is legally sufficient. *Id*. In conducting a factual sufficiency review, the court of appeals views all the evidence without the prism of "in the light most favorable to the prosecution" and sets aside the verdict only if it is so contrary to the overwhelming weight of the evidence as to be clearly wrong and unjust. *Id*. In conducting a factual sufficiency review, the court of appeals reviews the fact finder's weighing of the evidence and is authorized to disagree with the fact finder's determination. This review, however, must be appropriately deferential so as to avoid an appellate court's substituting its judgment for that of the jury. If the court of appeals reverses on factual sufficiency grounds, it must detail the evidence relevant to the issue in consideration and clearly state why the jury's finding is factually insufficient. The appropriate remedy on reversal is a remand for a new trial. *Id.*

Legal Sufficiency

The record is replete with evidence a rational juror could find the appellant guilty beyond a reasonable doubt. Looking at the evidence in the light most favorable to the verdict, the only fingerprints at the scene were those of the appellant, the deceased, and her relatives. The appellant, himself, testified that he did not act with any other person in causing the complainant's death. He denied what the physical evidence showed, that he washed blood, primarily below the knees, from his pants in his sink. Before trial, he stated that he explored the passenger side of the truck from the bed of the truck to avoid the mud. At trial, he testified that he stood in a puddle beside the passenger doorway. Neither claim is consistent with blood primarily below the knees of his pants. Reason and common sense would indicate that the only person placed on the scene, who lied about evidence he dragged the body, caused the complainant's death. We hold that a rational jury could find appellant intentionally and knowingly caused the death of the complainant beyond a reasonable doubt. We overrule appellant's point of error five contending the evidence is legally insufficient to sustain his conviction.

Factual Sufficiency

Under his sixth point of error, appellant asserts the same evidence is factually insufficient to sustain his conviction. Appellant does not specifically argue how the evidence is insufficient under any standard of reviewing factual sufficiency. He just contends there were no witnesses to he murder and "for all the reasons urged in appellant's fifth point of error, above, the jury's finding of guilt against the appellant was against the greater weight and preponderance of the evidence." Because this point is inadequately briefed, appellant has not preserved his factual sufficiency complaint for review. *See McDuff v. State,* 939 S.W.2d 607, 613 (Tex. Crim. App. 1997). We overrule appellant's point of error six contending the evidence is factually insufficient to sustain his conviction. We affirm the judgment of the trial court.

/s/ Maurice Amidei
Justice

Judgment rendered and Opinion filed June 14, 2001.

Panel consists of Justices Lee, Amidei, and Andell.[1]

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

[1] Senior Justice Norman Lee and Former Justices Eric Andell and Maurice Amidei sitting by assignment.