Affirmed and Opinion filed June 28, 2001.

In The

Fourteenth Court of Appeals

NO. 14-99-00896-CR

TERRY DWAYNE WILLIAMS, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the 212th District Court
Galveston County, Texas
Trial Court Cause No. 97CR1311

M E M O R A N D U M O P I N I O N

The parties are already familiar with the background of the case and the evidence adduced at trial, therefore, we limit recitation of the facts. We issue this memorandum opinion pursuant to Texas Rule of Appellate Procedure 47.1 because the law to be applied in the case is well settled.

Background

Robert Smith, complainant, traveled to Galveston with a friend for spring break in Galveston. Complainant was last seen alive by his friend when complainant left the hotel room.

Later, appellant told Robert Armstead, a school security guard, Lawrence Thomas, a school principal, and police officer Harold Beasley, that he shot someone in the tall grass on a remote beach. He also admitted to taking that person's auto and selling it. Appellant led the men to the murder scene where the nearly skeletonized body was found. Appellant was charged with capital murder by killing complainant in the course of a robbery. He was convicted by a jury of the offense and sentenced to life imprisonment. In this appeal, appellant argues that the evidence was legally and factually insufficient to support his conviction for capital murder because the State's evidence did not prove (1) the remains found were those of the complainant, (2) the complainant's cause of death was by a gunshot, as alleged in the indictment, and (3) the murder was not committed during the course of the robbery. We affirm.

Standard of Review

In determining whether the evidence is legally sufficient to support a verdict, we view the evidence "in the light most favorable to the verdict" and ask whether "any rational finder of fact could have found the essential elements of the crime beyond a reasonable doubt." *Weightman v. State*, 975 S.W.2d 621, 624 (Tex. Crim. App. 1998); *Lane v. State*, 933 S.W.2d 504, 507 (Tex. Crim. App. 1996) (citing *Jackson v. Virginia*, 443 U.S. 307, 318-319 (1979)). In contrast to a legal sufficiency review, a review of factual significancy requires that the evidence be viewed in a neutral light, favoring neither party. *Johnson v. State*, 23 S.W.3d 1, 7 (Tex. Crim. App. 2000) (citing *Clewis v. State*, 922 S.W.2d 126, 134 (Tex. Crim. App. 1996). The verdict will be set aside only if it is so contrary to the overwhelming weight of the evidence as to be clearly wrong and unjust. *Johnson*, 23 S.W.3d at 7.

Discussion

First, appellant complains the skeletal remains were not proven to be complainant's because no tests were done to determine the identity of the remains, and no witness identified the remains. The State counters that complainant and the remains bore the following similarities: White male, approximately 20 to 21 years old, approximately 6'1", no dental

work. Also, appellant took Armstead, Thomas and Beasley to the murder scene and identified, among other things, a tennis shoe and baseball cap emblazoned with "Offspring" as belonging to his victim. Beasley searched appellant's apartment and found numerous possessions, such as keys fitting complainant's car, a playboy bunny pendant, and a gold chain. In turn, complainant's friends and relatives at trial identified the clothing, keys and other personal property as complainant's. Appellant also took the car belonging to the person he killed, which was identified as the complainant's car.

The corpus delicti of murder is established if the evidence shows the death of a human being caused by the criminal act of another. *Fisher v. State*, 851 S.W.2d 298, 303 (Tex. Crim. App. 1993). The State may prove the corpus delicti by circumstantial evidence. *McDuff v. State*, 939 S.W.2d 607, 614 (Tex. Crim. App. 1997). Even the State's inability to produce and identify the body or remains does not preclude a murder conviction. *Id*. By these rules, then, the State need not necessarily even have produced complainant's body to prove appellant murdered complainant, so long as there was sufficient circumstantial evidence supporting that allegation. Here, however, a body was produced which matches complainant's in all material respects. Further, numerous of complainant's possessions were found with the body, or were taken from the body by appellant. We are provided no evidence contrary to these facts, which overwhelmingly show the person appellant killed was complainant. We therefore find the evidence is both factually and legally sufficient to prove the person appellant killed was the complainant.

Next, appellant argues that because no witness actually testified what was the cause of death, the State failed to prove the cause of death was the gunshot, as alleged in the indictment. We disagree. Appellant admitted he shot complainant from behind and that complainant immediately fell to the ground after being shot. The .38 caliber bullet from the murder weapon lodged in complainant's brain tissue. Complainant's body was found in approximately the same position where it was left. The cause of death of a victim may be proved by circumstantial evidence. *Boone v. State*, 689 S.W.2d 467, 468 (Tex. Crim. App. 1985). Opinion testimony on cause of death is not required. *Id*. Clearly, a reasonable jury could conclude beyond a

reasonable doubt that the gunshot, fired at close range, into complainant's brain, was the cause of complainant's death. Further, appellant points to nothing in the record indicating that complainant died by any other means. We therefore find the evidence is both factually and legally sufficient to prove the gunshot was the cause of complainant's death.

Finally, appellant contends there was insufficient evidence the murder occurred during a robbery. Specifically, appellant argues that though he admitted that he drove complainant's vehicle and took some of his property after the killing, there is nothing showing that it was committed in connection with robbery. Appellant misreads the record. One witness interviewed by Officer Beasley stated appellant said he "jacked"[1] complainant "for his car." Another witness interviewed by Beasley stated appellant displayed a ring and declared he had taken it from the person he had robbed and killed on the beach.[2] Additionally, apart from appellant's admissions, there is significant circumstantial evidence from which a reasonable jury could infer that appellant committed the murder in the course of a robbery. In his defense, appellant gave a statement to police asserting he accidentally shot complainant because complainant made a homosexual advance at him. Complainant's family and friends testified at trial that complainant was not homosexual. Further, appellant claimed he only took six dollars that fell out of complainant's pocket after he killed him. However, appellant's statements were belied by significant evidence to the contrary and the jury did not believe them. Thus we see no basis upon which to overturn the jury's finding. Therefore, we conclude the evidence is both factually and legally sufficient to prove appellant committed capital murder, as charged.

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

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[1] Beasley explained "jacked"is a street term for "robbed."

[2] These statements were related by Beasley but are not challenged as inadmissible hearsay.

/s/ Don Wittig
Justice

Judgment rendered and Opinion filed June 28, 2001.

Panel consists of Justices Fowler, Wittig and Amidei.[3]

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

[3] Former Justice Maurice Amidei sitting by assignment.