Affirmed and Opinion filed October 19, 2000.

In The

Fourteenth Court of Appeals

NO. 14-97-01394-CR

TERROND DARNELL BROWN, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the 176th District Court
Harris County, Texas
Trial Court Cause No. 750,876

O P I N I O N

Over his plea of not guilty, a Harris County jury found appellant, Terrond Darnell Brown, guilty of murder and assessed punishment at five years' confinement. *See* TEX. PEN. CODE ANN. § 19.02. Appellant brings seven points of error. We affirm.

Factual Background

In the early morning, Adam Schehin, complainant, was driving his pickup truck northbound on the North Freeway in Houston, Texas. Soon thereafter, Schehin's truck collided with another truck, causing the truck he hit to flip over several times. Schehin's truck swerved off the main lanes of the freeway and

crossed the frontage road. His truck finally came to rest in a gas station parking lot when he collided with a parked car.

Taiwana Goodman witnessed the accident on the freeway. She went to Schehin's truck and saw him and three people from the parked car get out. Goodman testified that Schehin did not have any blood on him, was able to walk around, and appeared uninjured.

Goodman further testified that appellant and Shaquan Jelks, occupants from the parked car, confronted Schehin, saying, "you know you don't have insurance" and "why you [sic] hit my car?" While Schehin attempted to explain that the accident was not his fault, and he had insurance, both Shaquan and appellant began hitting him, with appellant throwing the first punch. As they hit him, he yelled, "Why [are] you hitting me? It's not my fault." Goodman intervened in the fight, telling Shaquan and appellant to stop hitting Schehin. Appellant and Shaquan did stop, but seconds later, Jerald Jones, who was not an occupant of the parked car, entered the fray and struck Schehin one time in the head. Schehin immediately fell to the pavement. After he fell, Shaquan and appellant were still cursing at him. Appellant said, "Yeah, that's what you get—you deserve that;" "I'm going to kick his ass;" and "I'm going to kill this motherfucker." Furthermore, while Schehin was on the ground, appellant kicked him.

Once Schehin was knocked to the ground, he did not move again. He died shortly thereafter at Ben Taub Hospital.

A witness to the accident, Andre Martinez, attempted to speak to the police officer investigating the accident. The police officer told Martinez he would talk to him later and asked him to go home. As Martinez was getting into his car, appellant stopped him and tried to hit him. Martinez had a brief fight with Shaquan and appellant, but he eventually left the scene.

Dr. Patricia Moore, an Assistant Harris County Medical Examiner who performed the autopsy on Schehin, testified there was a five and a half inch fracture on the left side of his skull. There was also a large area of hemorrhage and necrosis on his brain's frontal lobes and on his left temporal lobe. There was a large area of hemorrhage around the brain stem. Schehin also suffered from a subdural hematoma.

Additionally, Dr. Moore detailed a number of other injuries to Schehin. There were three bruises to the left side of his upper chest, a large bruise to the upper part of his left arm, three smaller bruises to his right arm, and a contusion to the lower right lip. Dr. Moore testified that she did not find any evidence on Schehin's hands or knuckles indicating he had struck anyone.

Dr. Grundemeyer, a neurosurgical resident at Baylor College of Medicine who treated Schehin at Ben Taub Hospital, testified that it was extremely unlikely that a single blow to the head with a subsequent fall to the ground would have killed Schehin, even considering the severity of the skull fracture. He also noted that the bruising he observed in the frontal lobes and the left temporal lobe of Schehin's brain were probably unrelated to the skull fracture. He also pointed out that the bruising on Schehin's body was not likely to have occurred in the car accident, but rather appeared to be the result of multiple traumas.

Shaquan, and his brother who was also in the car, both denied ever striking Schehin. Even so, both claimed to have seen Jones strike Schehin. Appellant did not testify during guilt/innocence, but at the punishment stage he testified and denied striking Schehin.

Sufficiency of the Evidence

In his first through fourth points of error, appellant argues the evidence is legally and factually insufficient to support the jury's verdict. We review legal sufficiency challenges to determine "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." *Jackson v. Virginia*, 443 U.S. 307, 319, 99 S. Ct. 2781, 61 L. Ed.2d 560 (1979); *Malik v. State*, 953 S.W.2d 234, 240 (Tex. Crim. App. 1997). The standard is the same in both direct and circumstantial evidence cases. *See Geesa v. State*, 820 S.W.2d 154, 162 (Tex. Crim. App. 1991). To review appellant's factual sufficiency issue, we must ask whether a neutral review of 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. *See Johnson v. State*, 23 S.W.3d 1, 9-12, (Tex. Crim. App. 2000).

Murder is a "result of conduct" offense. *See Cook v. State*, 884 S.W.2d 485, 490 (Tex. Crim. App. 1994); *Marvis v. State*, 3 S.W.3d 68, 70 (Tex. App.–Houston [14th Dist.] 1999, pet. ref'd). A person commits the offense of murder if he intends to cause serious bodily injury and commits an act clearly

dangerous to human life that causes the death of an individual. *See* TEX. PEN. CODE ANN. § 19.02(b)(2) (Vernon 1994). Thus, the State must prove beyond a reasonable doubt that appellant intentionally caused serious bodily injury and committed an act clearly dangerous to human life causing the death of the complainant.

A person is criminally responsible as a party to an offense such as murder when "the offense is committed by his own conduct, by the conduct of another for which he is criminally responsible, or both." *Id*. § 7.01(a). A person is criminally responsible for an offense committed by the conduct of another if "acting with intent to promote or assist the commission of an offense, he solicits, encourages, directs, aids, or attempts to aid the other person to commit the offense." *Id*. § 7.02(a)(2).

The jury was charged disjunctively on two different manner and means. The first manner and means was "striking the complainant in the head." The second was "causing him to hit his head on the ground." Additionally, the jury was charged that it should convict appellant if it believed either that he committed those acts himself, or if any one or a combination of any of the three other people committed those acts, and appellant "solicited, encouraged, aided, or attempted to aid" said other person or people.

When a statute provides that an offense may be committed by alternative means, the State may charge those alternatives in the same indictment. *See White v. State*, 890 S.W.2d 69, 72 (Tex. Crim. App. 1994); *Kitchens v. State*, 823 S.W.2d 256, 258 (Tex. Crim. App. 1991). Moreover, while those means may be alleged in the conjunctive, the jury may be charged in the disjunctive and a conviction on any mean alleged will be upheld if it is supported by the evidence. *See id., White v. State*, 874 S.W.2d 229, 232 (Tex. App.–Houston [14th Dist.]) *pet. dism'd*, 890 S.W.2d 69 (Tex. Crim. App. 1994).

As detailed above, after reviewing the evidence in the light most favorable to the verdict, the evidence is legally sufficient to support the jury's verdict. Additionally, after conducting a neutral review of the evidence, the proof of guilt is not so obviously weak as to undermine confidence in the jury's determination. Accordingly, we overrule appellant's first four points of error.

Jury Charge Instruction

In his fifth point of error, appellant argues the trial court erred in submitting a law of the parties instruction to the jury when there was no evidence he and Jones acted as parties. When the evidence is sufficient to support both primary and party theories of liability, the trial court does not err in submitting an instruction on the law of the parties. *See Ransom v. State*, 920 S.W.2d 288, 302 (Tex. Crim. App. 1994) (op. on reh'g). A jury charge on the law of the parties is appropriate when the evidence indicates a defendant encouraged, directed, or aided another in the commission of the offense. *See* TEX. PEN. CODE ANN. § 7.02(a)(2) (Vernon 1994); *Crank v. State*, 761 S.W.2d 328, 352 (Tex. Crim. App. 1988); *Bryant v. State*, 982 S.W.2d 46, 49 (Tex. App.—Houston [1st Dist.] 1998, pet. ref'd). Circumstantial evidence may be sufficient to show that a person is a party to an offense. *See Thomas v. State*, 915 S.W.2d 597, 599 (Tex. App.–Houston [14th Dist.] 1996, pet. ref'd). The circumstantial evidence must show that at the time of the offense, the parties were acting together, each constituting some part toward the execution of a common purpose. *See id*. at 599-600. To find a defendant was a party to the offense, the evidence must show the parties acted together at the time of the offense, each contributing to the execution of the offense. *See Ransom*, 920 S.W.2d at 302; *Marvis*, 3 S.W.3d at 73. In determining whether a defendant participated in an offense as a party, the court may examine the events occurring before, during, and after the commission of the offense. *See Ransom*, 920 S.W.2d at 302; *King v. State*, 17 S.W.3d 7, 15 (Tex. App.–Houston [14th Dist.] 2000, pet. ref'd).

Additionally, if a defendant's conduct alone was sufficient to sustain the conviction, no charge on parties is required. *See Brown v. State*, 716 S.W.2d 939, 946 (Tex. Crim. App. 1986). Thus, any error charging the jury on the law of parties is harmless. *See id*.; *Umoja v. State*, 965 S.W.2d 3, 9 (Tex. App.—Fort Worth 1997, no pet.).

The medical testimony was not certain which of the assailants' blows caused the Schehin's death. Dr. Grundemeyer testified that it was unlikely a single blow caused his death. Consequently, each blow was a concurrent cause of his death. *See id*. Because there was no single blow causing Schehin's death, appellant was criminally responsible for it as a principal actor. *See* TEX. PEN. CODE ANN. § 6.04(a); *Umoja*, 965 S.W.2d at 9. Furthermore, even if the trial court erred by submitting the law of parties instruction, any error was harmless because the evidence supports appellant's guilt as a principal actor. *See Brown*, 716 S.W.2d at 946.

Thus, we find the trial court did not err in charging the jury on the law of the parties. Accordingly, we overrule appellant's fifth point of error.

Conjunctive Indictment/Disjunctive Charge

In his sixth point of error, appellant argues that the trial court erred in its charge to the jury. Appellant was accused in the indictment of causing the death of Schehin by committing an act clearly dangerous to human life, namely striking the complainant in the head *and* causing him to hit his head on the ground. Appellant argues the jury charge enlarged this indictment by charging the jury in the disjunctive, i.e., that the jury could convict him if they believed that he caused Schehin's death either by striking him in the head *or* causing him to hit his head on the ground. We disagree.

As previously stated, when a statute provides that an offense may be committed by alternative means, the State may charge those alternatives in the same indictment. *See White*, 890 S.W.2d at 72; *Kitchens*, 823 S.W.2d at 258; *Cumbie v. State*, 578 S.W.2d 732, 733 (Tex. Crim. App. 1979). Accordingly, the jury charge did not "enlarge the indictment," nor did it diminish in any way the State's burden of proof. *See id*. Thus, appellant's sixth point of error is overruled.

Voluntary Manslaughter

In his seventh point of error, appellant argues that during the punishment phase, the trial court erred in refusing to submit to the jury a charge on "voluntary manslaughter." A jury charge on voluntary manslaughter is appropriate when there is evidence that the defendant caused the death under the "immediate influence of sudden passion arising from adequate cause." TEX. PEN. CODE ANN. § 19.04(a) (Vernon 1994). However, when the defendant "initiates the criminal episode which leads to the victim's death and the victim was acting in an attempt to prevent the commission of the felony by the defendant, the victim's actions will not be viewed as constituting adequate cause from which sudden passion may arise for purposes of voluntary manslaughter." *Adanandus v. State*, 866 S.W.2d 210, 231 (Tex. Crim. App. 1993); *Hernandez v. State*, 969 S.W.2d 440, 446 (Tex. App.—San Antonio 1998, pet. ref'd).

Appellant's argument fails because he initiated the criminal episode which lead to Schehin's death. Schehin's actions did not constitute adequate cause from which sudden passion could arise for purposes

of voluntary manslaughter. *See Adanandus*, 866 S.W.2d at 231. Additionally, appellant testified he never hit Schehin; thus, there was no testimony to support a jury issue on voluntary manslaughter. *See Moore v. State*, 969 S.W.2d 4, 8-10 (Tex. Crim. App. 1998). Accordingly, appellant's seventh point of error is overruled.

Having overruled each of appellant's points of error, we affirm the trial court's judgment.

/s/ Norman Lee
Justice

Judgment rendered and Opinion filed October 19, 2000.

Panel consists of Justices Cannon, Draughn, and Lee.*

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* Senior Justices Bill Cannon, Joe L. Draughn, and Norman Lee sitting by assignment.