Affirmed and Opinion filed October 21, 1999.

In The

Fourteenth Court of Appeals

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NO. 14-97-00644-CR

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CRAIG ANTHONY BELL, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the 178th District Court
Harris County, Texas
Trial Court Cause No. 733,652

O P I N I O N

Appellant, Craig Anthony Bell, appeals his conviction for the offense of murder. Following a jury trial, appellant was found guilty of the murder of Curtis "Jay" Ware. The jury assessed punishment at fifty years' confinement in the Texas Department of Criminal Justice - Institutional Division. In three points of error, the appellant challenges the legal and factual sufficiency of the evidence and claims the trial court erred in admitting the confession of appellant's father into evidence. We affirm the trial court's judgment.

BACKGROUND

On the evening of June 28, 1996, three friends, Kevin Dixon, Tony Releford, and Curtis Ware, were walking through their neighborhood on their way to visit a friend. They were approached by the appellant's father, Charles Johnson, who pulled up near them in his blue Suburban. Charles Johnson, who was apparently intoxicated, started screaming and cursing at the three men. Dixon and Ware exchanged words with Johnson, but there was no physical altercation. The three then went to their friend's apartment, where they visited for a couple of hours. Upon leaving the apartment, Dixon, Releford, and Ware went to the Budget Food convenience store. Dixon received a page on his beeper and proceeded to the pay phones outside the store to return the call. Johnson also happened to be there using the pay phones. Johnson resumed the previous argument and further words were exchanged. A fight then ensued between Johnson and Dixon. Dixon was hit from behind and knocked unconscious. When Dixon awoke, he learned that his friend Curtis Ware had been shot and killed. At trial, Dixon testified that it was the appellant, Johnson's son, who had hit him from behind.

Several bystanders testified that they witnessed the fight. Anna Vaughn had stopped at the Budget Food to use the pay phone. While using the phone, Vaughn observed four or five males talking and noticed that their voices were getting louder. She thought a fight was about to break out. Vaughn saw the men begin pushing and shoving each other and saw one man fall to the ground. According to Vaughn, appellant was hitting and kicking the person on the ground. Vaughn described appellant as wearing a white, baggie t-shirt and baggie blue jean cut-off shorts. Appellant had a "determined look" on his face as he reached into his pocket and disappeared behind a blue Suburban. Vaughn stated she then heard what she believed to be a gunshot and heard an excited voice yell something like, "Oh, my, God he shot junior!" or "Junior shot him.[1]" The appellant then came back around from behind the Suburban and resumed kicking Dixon. Vaughn thought that the appellant's kicking was "going to kill him." Vaughn saw appellant casually walk off, get into a Geo Tracker, and leave the store parking lot.

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[1] Testimony was introduced that appellant is sometimes referred to by the nickname "Junior."

Samuel Lopez was also an eyewitness to the shooting that evening. Lopez was leaving a restaurant near the Budget Food store when he observed the fight. Lopez observed two men, one large and one short, beating up a third man who was unconscious on the ground. Lopez could not identify the two men beyond a general description of each; however, the general description fit the description of appellant and Johnson. Lopez testified that the larger man was wearing blue shorts and a white t-shirt, the same description that Anna Vaughn gave of the clothing appellant was wearing. Lopez saw the larger man jump on Dixon's head. A fourth individual, presumably Ware, attempted to aid Dixon and hit the larger man in the face. The fourth man ran and the larger man gave chase. When they neared the corner of the store, Lopez heard a shot and saw one of the men fall. When the larger man turned around, Lopez saw a gun in his hand. However, Lopez said he never saw the shooter's face.

Tony Releford also testified at trial. Like Lopez, he said that he did not get a good look at the shooter's face, but he testified that the shooter was the same man who kicked Dixon in the head. However, Releford also stated he did not remember seeing the appellant at the scene.

Physical evidence linking appellant to the murder scene was admitted at trial. A blue pager with recent pages from appellant's friends and girlfriend was picked up by Dixon and given to the police. The police also recovered a blue bandana. Testimony indicated that appellant often wore a blue bandana similar to the one found at the scene.

Appellant presented eight alibi witnesses, including his girlfriend and several of her relatives. They testified that appellant was with them the evening of the murder at an anniversary party for his girlfriend's parents. Appellant also presented two witnesses who testified that they did not see appellant at the crime scene during the altercation.

SUFFICIENCY OF EVIDENCE

In conducting a legal sufficiency review of the evidence, an appellate court must view the evidence adduced at trial in the light most favorable to the verdict, and determine if any rational factfinder could have found the crime's essential elements to have been proven beyond a reasonable doubt. *See Jackson v. Virginia*, 443 U.S. 307, 319 (1979); *Geesa v. State*, 820

S.W.2d 154, 165 (Tex. Crim. App. 1991). The reviewing court will examine the entire body of evidence; if any evidence establishes guilt beyond a reasonable doubt, and the factfinder believes that evidence, the appellate court may not reverse the factfinder's judgment on grounds of sufficiency. *See id.*

In reviewing the evidence for factual sufficiency, an appellate court will examine all the evidence without the prism of "in the light most favorable to the prosecution," and will set aside the jury's verdict only if it is so contrary to the overwhelming weight of the evidence as to be clearly wrong and unjust. *See Clewis v. State*, 922 S.W.2d 126, 129 (Tex. Crim. App. 1996). If there is sufficient competent evidence of probative force to support the finding, a factual sufficiency challenge will fail. *See Taylor v. State*, 921 S.W.2d 740, 745 (Tex. App.—El Paso 1996, no pet.).

The jury is the sole judge of the facts, the witnesses' credibility, and the weight to be given the evidence. *See Clewis*, 922 S.W.2d at 129; *Penagraph v. State*, 623 S.W.2d 341, 343 (Tex. Crim. App. 1981). Accordingly, the jury may choose to believe or not believe any portion of the witnesses' testimony. *See Sharp v. State*, 707 S.W.2d 611, 614 (Tex. Crim. App. 1986). If the record contains conflicting testimony, conflict reconciliation is within the jury's exclusive province. *See Heiselbetz v. State*, 906 S.W.2d 500, 504 (Tex. Crim. App. 1995). A reviewing court may not substitute its conclusions for that of the jury, nor may it interfere with the jury's resolution of conflicts in the evidence. *See id.*

Appellant argues that the evidence produced at trial was insufficient to prove that he shot the victim. Specifically, appellant points to the lack of physical evidence, such as fingerprints, a gun, or shell casings, directly linking appellant to the murder. Appellant also points to the lack of a confession, accomplice testimony, or direct testimony from a witness identifying appellant as the shooter. However, based on the testimony of Anna Vaughn, Samuel Lopez, and Kevin Dixon, a rational trier of fact could conclude from their testimony, taken together, that the crime's essential elements have been proven beyond a reasonable doubt and that appellant was indeed the shooter. *See Jackson, supra*. We are also confident that the

jury's verdict was not so contrary to the overwhelming weight of the evidence as to be clearly wrong and unjust. *See Clewis, supra*. As we previously noted, the credibility of the witnesses and the reconciliation of conflicts in the testimony is within the province of the jury. *See Heisellietz,* 906 S.W.2d at 504. Thus, the jury was free to disbelieve appellant's witnesses. Their decision to do so does not render the evidence legally or factually insufficient. We, therefore, overrule appellant's first and second points of error.

ADMISSION OF CONFESSION

Appellant avers in his third point of error that the trial court erred in admitting the confession of appellant's father, Charles Johnson, into evidence. Appellant objected on the basis that the evidence was not relevant. The State responded that evidence Johnson gave a voluntary statement and then changed his mind and destroyed the statement, was relevant to show that Johnson was attempting to hide information about what had occurred. The trial court overruled the appellant's objection to the relevancy of the statement and allowed the testimony.[2]

The admission of evidence is a matter within the discretion of the trial court. *See Montgomery v. State*, 810 S.W.2d 372, 391 (Tex. Crim. App. 1990). Accordingly, the admission of evidence is reviewed under an abuse of discretion standard. *Id*. A reviewing court will not disturb a trial court's evidentiary decision absent a clear abuse of discretion. *Id*.

Rule 402 of the Texas rules of evidence provides that all relevant evidence is admissible. *See* TEX. R. EVID. 402. Relevant evidence is defined as "evidence having *any* tendency to make the existence of any fact that is of consequence to the determination of the action more probable than it would be without the evidence. TEX. R. EVID. 401 (emphasis added).

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[2] Neither Johnson's actual statement, nor the contents of the statement, were admitted at trial. Rather, a police detective testified that he took a written statement from Johnson. After taking the statement he left the room. When he returned, Johnson had torn up the statement, poured soda on it, and thrown it in the garbage.

While it is true that the evidence complained of (appellant's father making a statement and then destroying it) would not be dispositive as to any of the issues in the case, such evidence could be used by a jury to infer that appellant's father was attempting to protect his son. Therefore, we find that the trial court did not abuse its discretion in allowing testimony about the statement and its subsequent destruction. Appellant's third point of error is overruled.

The judgment of the trial court is affirmed.

/s/ Leslie Brock Yates
Justice

Judgment rendered and Opinion filed October 21, 1999.

Panel consists of Justices Yates, Fowler and Draughn.[3]

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

[3] Senior Justice Joe L. Draughn sitting by assignment.