Affirmed and Opinion filed October 26, 2000.

In The

Fourteenth Court of Appeals

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NO. 14-98-00703-CR

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SHAQUAN JERMAINE JELKS, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the 176th District Court
Harris County, Texas
Trial Court Cause No. 750,877

O P I N I O N

Shaquan Jermaine Jelks (Shaquan) appeals his jury conviction for murder. The jury assessed his punishment at thirteen years' imprisonment and a $10,000.00 fine. In six issues, or points of error, appellant contends: (1) the evidence is legally and factually insufficient to sustain his conviction (issues one and two); (2) The trial court erred in overruling his motion for an instructed verdict (issue three); (3) the trial court erred in overruling his objection to the jury charge (issue four); (4) the evidence is legally and factually insufficient to establish his criminal responsibility as a party. We affirm.

BACKGROUND

On April 6, 1997, at about 4:00 a.m., Alberto Aguirre was driving his yellow pickup truck north on I-45 when he was struck in the rear by a pickup driven by the victim, Troy Adam Schehin. Aguirre's truck rolled over several times and came to rest on its wheels. Schehin's pickup veered to the right, crossed over the grass edge of the road, then across a feeder road, and hit Shaquan's parked Cadillac in the adjoining Shell station. Appellant was in the driver's seat of his Cadillac, Terrond Brown was in the front passenger seat, and appellant's brother, Keithan Jelks, was sitting in the back seat. Schehin got out, walked over to appellant's car, and apologized for the accident. He told appellant the accident was not his fault and that he had insurance. Appellant and Terrond Brown got out of appellant's Cadillac and cursed Schehin. Brown and appellant then started striking Schehin in the face with their fists, and Schehin covered his face with his arms and backed several feet away. Appellant and Brown followed him, and continued hitting him. Schehin stopped and was standing near the feeder road when Jerald Jones came out the crowd and hit Schehin once in the face. Schehin fell backwards without breaking his fall, and his head struck the pavement. Schehin died later that day from multiple injuries to the brain.

LEGAL AND FACTUAL SUFFICIENCY OF THE EVIDENCE

In issues one and two, appellant contends the evidence is legally and factually insufficient to support his conviction. In issue three, appellant contends the trial court erred in overruling his motion for an instructed verdict.

A challenge to the denial of a motion for an instructed verdict is actually a challenge to the legal sufficiency of the evidence. *See Madden v. State*, 799 S.W.2d 683, 686 (Tex.Crim.App.1990), *cert. denied*, 499 U.S. 954, 111 S.Ct. 1432, 113 L.Ed.2d 483 (1991); *Thornton v. State*, 994 S.W.2d 845, 849 (Tex.App.-Fort Worth 1999, pet. ref'd).

In reviewing the legal sufficiency of the evidence, we consider all the evidence, both State and defense, in the light most favorable to the verdict. *Houston v. State*, 663 S.W.2d 455, 456 (Tex.Crim.App.1984); *Garrett v. State*, 851 S.W.2d 853, 857 (Tex.Crim.App. 1993). In reviewing the sufficiency of the evidence in the light most favorable to the verdict or judgment, the appellate court is to determine whether any rational trier of fact could have found the essential elements of the offense beyond a reasonable doubt. *Jackson v. Virginia*, 443 U.S. 307, 318-19 (1979); *Ransom v. State*, 789

S.W.2d 572, 577 (Tex.Crim.App. 1989), *cert. denied*, 110 S.Ct. 3255 (1990). This standard is applied to both direct and circumstantial evidence cases. *Chambers v. State*, 711 S.W.2d 240, 245 (Tex.Crim.App. 1986). The jury is the exclusive judge of the facts, credibility of the witnesses, and the weight to be given to the evidence. *Chambers v. State*, 805 S.W.2d 459, 462 (Tex.Crim. App. 1991). In conducting this review, the appellate court is not to re-evaluate the weight and credibility of the evidence, but act only to ensure the jury reached a rational decision. *Muniz v. State*, 851 S.W.2d 238, 246 (Tex.Crim.App.1993); *Moreno v. State*, 755 S.W.2d 866, 867 (Tex.Crim.App1988). In making this determination, the jury can infer knowledge and intent from the acts, words, and conduct of the accused. *Dues v. State*, 634 S.W.2d 304, 305 (Tex.Crim.App.1982).

The sufficiency of the evidence to support a conviction should no longer be measured by the jury charge actually given but rather measured by the elements of the offense as defined by a hypothetically correct charge. *See Curry v. State*, 975 S.W.2d 629, 630 (Tex.Crim.App.1998). "Such a charge would be one that accurately sets out the law, is authorized by the indictment, does not unnecessarily increase the State's burden of proof or unnecessarily restrict the State's theories of liability and adequately describes the particular offense for which the defendant was tried." *Malik v. State*, 953 S.W.2d 234, 240 (Tex.Crim.App.1992).

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*.

A factual sufficiency review must be appropriately deferential so as to avoid the appellate court's substituting its own judgment for that of the fact finder. *Santellan v. State*, 939 S.W.2d 155, 164 (Tex.Crim.App.1997). This court's evaluation should not substantially intrude upon the fact finder's role as the sole judge of the weight and credibility of witness testimony. *Id.* The appellate court maintains this deference to the fact findings, by finding fault only when "the verdict is against the great weight of the evidence presented at trial so as to be clearly wrong and unjust." *Id.*

The court of criminal appeals has recently clarified *Clewis* addressing the factual sufficiency standard of review. *See Johnson v. State*, 23 S.W.3d 1, 42 (Tex.Crim.App. 2000). The court of criminal appeals held, in pertinent part:

> We hold, therefore, that our opinion in *Clewis* is to be read as adopting the complete civil factual sufficiency formulation. Borrowing in part from Justice Vance's concurring opinion in *Mata v. State*, 939 S.W.2d 719, 729 (Tex.App.--Waco 1997, no pet.), the complete and correct standard a reviewing court must follow to conduct a *Clewis* factual sufficiency review of the elements of a criminal offense asks whether a neutral review of all 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.

Johnson, 23 S.W.3d at 42.

The Evidence

Andre Martinez heard the crash on the freeway, and walked toward the Shell station and saw people gathered around a fight between "two black guys" and a "white guy." Martinez observed appellant and Terrond Brown throwing punches at Schehin, and observed Schehin covering his face with his hands and jerking his head back when appellant and Brown threw punches. Martinez saw Schehin fall backwards to the ground without breaking his fall. Martinez went up to Schehin to see if he was all right, but Schehin seemed to be unconscious. Martinez identified appellant in court as one of the black men that hit Schehin. Martinez indicated appellant was wearing a red T-shirt at the time. Martinez identified Brown as the other black man who hit Schehin, and stated that Brown had his hair in braids. Martinez walked over to a police officer to report what he had seen, and appellant came up and started arguing with him.

Appellant told Martinez: "Oh, you going to be a witness? You going to try to tell on us?" Martinez also observed appellant jump on the front bumper of Schehin's truck and hit the hood with his hand. After Schehin was knocked to the ground, Martinez overheard Brown say, "[Y]eah, that's what you get for messing with us."

Tiawana Goodman saw Schehin's truck hit appellant's Cadillac in the Shell station. Goodman ran over to the Shell station and observed appellant in a red T-shirt getting out of the driver's side of his Cadillac. She observed Brown with braided hair get out of the passenger side, and saw one other black male remain in the back seat. She heard appellant tell Schehin that he was drunk. She heard Schehin tell appellant that the accident wasn't his fault. She then saw Brown punch Schehin in the face. Schehin started backing away with his hands over his face, and appellant hit Schehin in the face. Both Brown and appellant hit Schehin again, and Schehin kept his hands over his face trying to protect himself. Goodman then observed Jones come out of the crowd and hit Schehin once in the face, and Schehin fell backwards hitting the back of his head on the pavement.

Kevin Reeves was a passenger in Jerald Jones's car, and Jones was driving from the Chocolate Town Club where they had seen appellant's Cadillac in the parking lot. Jones recognized appellant's car at the Shell station, and Jones pulled his car over to the adjoining Mobil station and parked. Jones got out of his car and ran over to the Shell station. Reeves observed appellant and Brown hitting or kicking Schehin's truck. Appellant said that he had just gotten his car out of the shop. Reeves saw appellant and Brown throw three blows to Schehin's face. Although he did not see Jones hit Schehin, Jones later told Reeves that he had hit Schehin once in the face. Reeves overheard either appellant or Brown say, "[T]hat's for my paint job, bitch."

Keithan Jelks, appellant's brother, testified that Schehin had blood on his face when he got out of his pickup after the accident. He stated that Brown and Schehin argued, and that Keithan and Shaquan held Brown back. He stated that neither Shaquan nor Brown ever struck Schehin, but he did see Jones punch Schehin once in the face. Keithan stated that they had no agreement to help Jones assault Schehin in any manner, and they did not aid or encourage Jones in his assault on Schehin.

Appellant testified that he did not know Jerald Jones, that he had no agreement to help Jones assault Schehin, and he did not aid or encourage Jones in his assault on Schehin. Appellant stated he did not hit Schehin, and he was not wearing a red T-shirt that day.

Dr. Raymond Grundmeyer, a neurosurgery resident, was on duty at Ben Taub hospital and attended Schehin. He testified that the last blow by Jones, causing Schehin to fall backwards and fracture his skull on the pavement, would not alone have killed Schehin. Along with the injuries associated with the skull fracture, there were multiple blunt injuries to Schehin's brain that caused diffuse swelling in many areas that ultimately caused his death. In response to the prosecutor's question asking if the brain injuries were consistent with being struck in the head, Dr. Grundmeyer agreed that the diffuse swelling and bruising to Schehin's brain were consistent with such blows. The doctor stated, ". . . any type of multiple blunt trauma would be consistent with that." In response to the prosecutor's question asking if Schehin had incurred his brain injuries in the automobile accident, would he have been able to get out of his pickup truck, have a conversation, and back up and move away from his attackers, Dr. Grundmeyer stated "no."

Discussion

In issues one and two, appellant challenges the legal and factual sufficiency of the evidence to sustain his conviction. Specifically, he argues that there is no evidence that he intended to cause "serious bodily injury" to Schehin, and no evidence that he committed an act objectively clearly dangerous to human life as required by section 19.02(b)(2), Texas Penal Code.

Intent to cause serious bodily injury is a question of fact to be determined by the trier of fact from all the facts and circumstances in evidence. *Hemphill v. State*, 505 S.W.2d 560, 562 (Tex.Crim.App.1974). Furthermore, intent may be inferred from the actions, words, and conduct of the defendant. *Beltran v. State*, 593 S.W.2d 688, 689 (Tex.Crim.App.1980). *See also West v. State*, 846 S.W.2d 912, 915(Tex.App.-Beaumont 1993, pet. ref'd).

We find the above and other similar evidence in the record before us sufficient to permit the jury to at least infer that appellant intended to cause serious bodily injury to Schehin and committed an act

clearly dangerous to human life. Appellant's contention in issue one that the evidence is legally insufficient to sustain his conviction is overruled.

Under point two, appellant further argues the same evidence is factually insufficient. Appellant does not specifically argue how the evidence is insufficient under any standard of reviewing factual sufficiency. He just contends the "verdict is so contrary to the overwhelming weight of the evidence as to be clearly wrong and unjust." 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 contentions in issue two.

Having addressed appellant's legal sufficiency complaint, we likewise overrule appellant's contentions in issue three that the trial court erred in overruling his motion for an instructed verdict. *See Madden*, 799 S.W.2d at 686 (motion for an instructed verdict is challenge to the legal sufficiency of the evidence).

THE JURY CHARGE INSTRUCTION ON THE LAW OF PARTIES

In issue four, appellant contends the trial court erred in overruling his written objection to the court's jury charge instruction on the law of parties. Specifically, appellant argues there was no evidence that appellant was acting with the intent to promote or assist the commission of the murder and solicited, encouraged, directed, aided or attempted to aid Jerald Jones to commit the offense. In issues five and six, appellant contends the evidence is legally and factually insufficient for the jury to find appellant criminally responsible for the acts of Jerald Jones under the trial court's charge on the law of parties.

Discussion

The evidence indicates that appellant, Brown, and Jones all struck Schehin in the face. Dr. Grundmeyer concluded that no one injury caused Schehin's death, but that multiple blunt injuries to Schehin's brain caused diffuse swelling in many areas that ultimately caused his death. Dr. Grundmeyer opined that the skull fracture contributed Schehin's overall brain injuries but was not the sole cause of his death.

Appellant was charged as a principal and as a party acting with Jones and/or Brown, in committing the murder. The State argues that the evidence is sufficient to convict appellant as a principal actor. Section 6.04(a), Texas Penal Code, provides:

> A person is criminally responsible [for an offense] if the result would not have occurred but for his conduct, operating either alone or concurrently with another cause, unless the concurrent cause was clearly sufficient to produce the result and the conduct of the actor clearly insufficient.

TEX. PEN. CODE ANN. § 6.04(a) (Vernon 1994 & Supp. 2000).

Under this section, two combinations may exist to satisfy the requisite causal connection between appellant's conduct and the harm that followed: (1) the [appellant's] conduct may be sufficient by itself to have caused the harm, regardless of the existence of a concurrent cause; or (2) the [appellant's] conduct and the other cause together may be sufficient to have caused the harm. *Robbins v. State*, 717 S.W.2d 348, 351 (Tex.Crim.App.1986); *Umoja v. State*, 965 S.W.2d 3, 8 (Tex.App.–Fort Worth 1997, no pet.). Section 6.04(a) further defines and limits the "but for" causality for concurrent causes by the last phrase, "unless the concurrent cause was clearly sufficient to produce the result and the conduct of the actor clearly insufficient." *Robbins*, 717 S.W.2d at 351; *Umoja*, 965 S.W.2d at 8. If the additional cause, other than the defendant's conduct, is clearly sufficient by itself, to produce the result and the defendant's conduct, by itself, clearly insufficient, then the defendant cannot be convicted. *Id*.

Dr. Grundmeyer could not say with any degree of certainty which of the blows caused the death of the victim. He did state that all the blows to the victim contributed ultimately to his death. Essentially, he concluded that no one wound inflicted on the victim was the cause of his death, and that each wound was a concurrent cause of death. Because no other concurrent cause was "clearly sufficient" to cause the victim's death, appellant was criminally responsible for it as a principal actor. *Robbins*, 717 S.W.2d at 351; *Umoja*, 965 S.W.2d at 8. Even assuming *arguendo* that the trial court erred in the submission of the application paragraph, where the evidence clearly supports a defendant's guilt as a principal actor, any error of the trial court in charging on the law of parties is harmless. *See Brown v. State*, 716 S.W.2d 939, 946 (Tex.Crim.App. 1986). If the jury is charged on alternate theories of culpability, and the jury returns a general verdict, the evidence is sufficient to support the guilty verdict on any alternate theory

submitted, and the verdict will be upheld. *Rabbani v. State*, 847 S.W.2d 555, 558 (Tex.Crim.App. 1992), *cert. denied*, 113 S.Ct. 3047(1993). Thus, the State need only have sufficiently proven one of the paragraph allegations to support the verdict of guilt. *Fuller v. State*, 827 S.W.2d 919, 931 (Tex.Crim.App. 1992), *cert. denied*, 113 S.Ct.3035(1993). In this case, the jury returned a general verdict of "guilty of murder, as charged in the indictment." We find the evidence is legally and factually sufficient to sustain appellant's conviction as a principal actor; therefore, the jury charge under the law of parties is inconsequential. *Brown*, 716 S.W.2d at 946. Because appellant was clearly guilty as a principal actor, we need not review the evidence to determine if appellant is additionally culpable under a party theory. *Fuller*, 827 S.W.2d at 931. Appellant's contentions in issues four, five, six are overruled.

We affirm the judgment of the trial court.

/s/ Bill Cannon
Justice

Judgment rendered and Opinion filed October 26, 2000.
Panel consists of Justices Cannon, Draughn, and Lee.*
Do Not Publish — TEX. R. APP. P. 47.3(b).

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