

Affirmed and Opinion filed January 6, 2000.



In The

Fourteenth Court of Appeals

NO. 14-97-01087-CR

ROLAND DEWAINÉ MAYES, Appellant

V.

THE STATE OF TEXAS, Appellee

**On Appeal from the 232nd District Court
Harris County, Texas
Trial Court Cause No. 732,148**

OPINION

Roland Dewaine Mayes appeals a conviction for capital murder on the grounds that the evidence is legally and factually insufficient to prove that he intended the complainant to die because there was no evidence that appellant: (1) fired the gunshots; (2) was present when the complainant was shot; or (3) knew the shooter was going to kill the complainant. We affirm.

Standard of Review

When reviewing legal sufficiency, we view the evidence in the light most favorable to the verdict and determine whether a rational trier of fact could have found the elements of the offense beyond a reasonable doubt. *See Jackson v. Virginia*, 443 U.S. 307, 318-19 (1979); *Gale v. State*, 998 S.W.2d 221, 223 (Tex. Crim. App. 1999). A factual sufficiency review takes into consideration all of the evidence and weighs that which tends to prove the existence of the fact in dispute against the contradictory evidence. *See Fuentes v. State*, 991 S.W.2d 267, 271 (Tex. Crim. App. 1999), *cert. denied*, ___ S.Ct. ___ (1999). That a different verdict would be more reasonable is insufficient to justify reversal; rather, the jury's verdict will be upheld unless it is so against the great weight of the evidence that it is clearly wrong and unjust. *See id.* at 272.

A person commits the offense of capital murder if he intentionally commits a murder,¹ in the course of committing or attempting to commit robbery.² *See* TEX. PEN. CODE ANN. § 19.03(a)(2) (Vernon 1994). A person is criminally responsible as a party to an offense if the offense is committed by his own conduct, the conduct of another for which he is criminally responsible, or both. *See id.* § 7.01(a). A person is criminally responsible for an offense committed by another if, acting with the intent to promote or assist the commission of the offense, he solicits, encourages, directs, aids, or attempts to aid the other person to commit the offense. *See id.* § 7.02(a)(2). In determining whether the accused participated as a party, the court may look to events occurring before, during, and after commission of the offense, and may rely on actions of the defendant which show an understanding and common design to do the prohibited act. *See Ransom v. State*, 920 S.W.2d 288, 302 (Tex. Crim. App. 1994).

¹ A person commits the offense of murder if he intentionally or knowingly causes the death of an individual. *See* TEX. PEN. CODE ANN. § 19.02(b)(1) (Vernon 1994).

² A person commits the offense of robbery if, in the course of committing theft and with the intent to obtain or maintain control of the property, he: (1) intentionally, knowingly, or recklessly causes bodily injury to another; or (2) intentionally or knowingly threatens or places another in fear of imminent bodily injury or death. *See* TEX. PEN. CODE ANN. § 29.02(a) (Vernon 1994). A person commits the offense of theft if he unlawfully appropriates property with intent to deprive the owner of property. *See id.* § 31.03(a) (Vernon Supp. 2000).

Legal Sufficiency

The application paragraph of the jury charge in this case authorized the jury to convict appellant of capital murder either as a principal actor or as a party. Natasha Neal testified at trial that she and her cousin, Marshell Ward, were at Neal's house waiting for the complainant, Tong Luu, an insurance agent, to come by so they could pay him for their insurance policies. Neal stated that after Luu arrived, collected his money, and left, Shameka Smith and Wylmon Boudreaux, who were also at the house during Luu's visit, discussed robbing Luu. Smith then left the house, returned with appellant, and paged Luu. Smith and Ward thereafter left the house, leaving Neal, Boudreaux, and appellant there.

When Luu returned to the house, appellant grabbed him by the neck and "body slammed" him. Boudreaux then pulled a gun from his pants and demanded Luu's money. Luu responded that his money was in his car, and Boudreaux went outside to look for it while appellant held Luu at gunpoint. Angry because he had found no money, Boudreaux returned and hit Luu on the head with his gun. In Neal's and appellant's presence, Boudreaux also threatened to kill Luu. Appellant watched Boudreaux hit Luu and grabbed Luu's hands when he began to struggle.

When Luu continued to struggle, appellant and Boudreaux taped Luu's hands and feet together and connected them with a coat hanger. Appellant and Boudreaux placed Luu in the trunk of Luu's car, and Boudreaux then drove it away with appellant sitting in the passenger seat. Approximately five minutes later, appellant and Boudreaux returned with blood all over their clothes. When Smith and Ward returned to the house, Boudreaux told Smith that he had shot Luu. Ward also testified that when she returned to the house with Smith, Neal was crying and scrubbing blood off the floor and told her that appellant and Boudreaux had killed Luu. Luu's autopsy revealed that he died from gunshot wounds.

Officer Scott Dalmas testified that when he investigated the house, he found a roll of clear tape and a coat hanger in the kitchen. The tape and coat hangers found at the house and murder scene correspond with the descriptions given by Neal as to what occurred in the house and how Luu was tied and bound. In addition, a fingerprint expert testified that

appellant's fingerprints were found inside Luu's car at the murder scene. Furthermore, a chemist with the Houston Police Department testified that samples of Luu's DNA matched blood samples taken from the house and the shirt appellant was wearing the night of the murder. From this evidence, a rational trier of fact could have found that appellant, acting with the intent to promote or assist the commission of the murder, encouraged, aided, or attempted to aid Boudreaux in killing Luu. *See* TEX. PEN. CODE ANN. § 7.02(a)(2) (Vernon 1994). Therefore, the evidence is legally sufficient and appellant's first point of error is overruled.

Factual Sufficiency

In two statements he made to Officer Larry Ware, appellant stated that he did not participate in any of the beatings of Luu and that Boudreaux left the house alone with Luu. He further stated that he did not know what happened when Boudreaux drove Luu away in Luu's car. In addition, Amy Harrelson, a chemist with the Harris County Medical Examiner's Office testified that both appellant's and Boudreaux's atomic absorption tests³ came out negative. However, Harrelson also stated that the passage of time or washing of one's hands before taking the test could vary the results significantly. Because the evidence contradicting appellant's guilt does not render the verdict so contrary to the overwhelming weight of the evidence that it is clearly wrong and unjust, appellant's second point of error

³ Harrelson testified that atomic absorption tests determine whether a person has any gunshot powder residue on his hands from recently firing a gun.

is overruled, and the judgment of the trial court is affirmed.

/s/ Richard H. Edelman
Justice

Judgment rendered and Opinion filed January 6, 2000.

Panel consists of Chief Justice Murphy, and Justices Hudson and Edelman.

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