



NUMBER 13-18-00687-CR

COURT OF APPEALS

THIRTEENTH DISTRICT OF TEXAS

CORPUS CHRISTI - EDINBURG

LEONARD MAURICE SOLOMON,

Appellant,

v.

THE STATE OF TEXAS,

Appellee.

**On appeal from the 117th District Court
of Nueces County, Texas.**

MEMORANDUM OPINION

**Before Chief Justice Contreras and Justices Benavides and Longoria
Memorandum Opinion by Chief Justice Contreras**

Appellant Leonard Maurice Solomon appeals his conviction for murder, a first-degree felony. See TEX. PENAL CODE ANN. § 19.02. By two issues, appellant argues (1) the trial court erred when it ordered him to provide a voice exemplar in-trial and (2) the evidence was insufficient to prove he was the shooter or a party to the shooting. We affirm.

I. BACKGROUND

In December 2017, appellant was indicted for the murder of Franco Bucato. The indictment alleged that, on January 31, 2016, appellant acted along with his girlfriend Rhonda Reyna “and/or an unknown person” in causing the death of Bucato. Specifically, the indictment alleged that appellant, with intent to cause serious bodily injury, committed an act clearly dangerous to human life by discharging a firearm at Bucato. See *id.* § 19.02(b)(2). Appellant pleaded not guilty and proceeded to trial.

At trial, the evidence showed that Reyna went to the house of Mark Huape with Brittany Garcia, Viviana Rios, and Sabrina Martinez because Garcia wanted to fight Cassandra Ramos, who was at Huape’s house. Once at the house, Ramos and Garcia got into an altercation, and Huape attacked and punched all four women (Reyna, Garcia, Rios, and Martinez). Reyna told Huape that she was “going to call her boyfriend up,” and she apparently called appellant and informed him of what occurred. Later that same evening, appellant, along with three or four other men, followed Reyna in a separate vehicle to the alley by Huape’s house.

A person wearing a ski mask matching appellant’s description got out of a car in front of Huape’s house and began yelling, wanting to know who had harmed his girlfriend “Rhonda.” Huape and Bucato approached the individual, and the individual punched and shot Bucato, fatally wounding him.¹ During these events, Ramos was inside the house and heard an individual outside yelling and asking who attacked his girlfriend. At trial, the State asked for a demonstrative exhibit requiring appellant to state the phrase “who

¹ Bucato and Huape were members of the gang MS-13, according to Huape.

fucked with my girl Rhonda,” so that Ramos could identify the voice. Appellant objected on the basis that it was suggestive and unreliable. The trial court ordered appellant to stand up, asked him how he pleaded to the charge of murder, and appellant responded “not guilty.” Ramos then testified that she identified appellant’s voice as the one she heard asking about Reyna the night of the shooting. Three other witnesses—Reyna, Shawn Garcia, and Marin Garcia—provided additional testimony that identified appellant as the shooter.

The jury found appellant guilty and assessed punishment at forty years’ imprisonment. This appeal followed.

II. VOICE EXEMPLAR

By his first issue, appellant argues the trial court erred when it ordered him to provide a voice exemplar at trial. Specifically, appellant argues the voice identification was unreliable because almost three years had passed since the murder took place.

We review a trial court’s decision on the admissibility of evidence for an abuse of discretion. *Martin v. State*, 173 S.W.3d 463, 467 (Tex. Crim. App. 2005). Under an abuse of discretion standard, we will uphold the decision of the trial court unless the ruling falls outside the zone of reasonable disagreement. *Id.*

Here, appellant objected to the request by the prosecution that he repeat the phrase that the shooter allegedly said the night of the shooting because it was suggestive and unreliable. However, the trial court implicitly sustained the objection and instead asked appellant to stand up and state how he pleaded to the charge of murder. Ramos then testified that appellant’s voice was the voice she heard on the evening of the shooting yelling and inquiring about who had harmed his girlfriend “Rhonda.” Because appellant

did not object to the trial court's question asking him to reiterate his plea, he failed to preserve any alleged error for our review. See TEX. R. APP. P. 33.1(a); *Haley v. State*, 173 S.W.3d 510, 516 (Tex. Crim. App. 2005).

Nevertheless, even if appellant had preserved error, the issue concerning the reliability and weight of the in-court identification was an issue for the jury. See *Perry v. New Hampshire*, 565 U.S. 228, 233 (2012) ("The Constitution, our decisions indicate, protects a defendant against a conviction based on evidence of questionable reliability, not by prohibiting the introduction of the evidence, but by affording the defendant means to persuade the jury that the evidence should be discounted as unworthy of credit."); *McInturf v. State*, 544 S.W.2d 417, 419 (Tex. Crim. App. 1976) ("The difference between recognition of a familiar voice and a voice heard only at the time of, and subsequent to, the offense goes to the weight and probative value of the voice identification testimony and, as such, is a fact for the determination of the trier of the facts."). The reliability of the identification can be tested through the rights and opportunities generally designed for that purpose, notably, vigorous cross-examination, protective rules of evidence, jury instructions, and the requirement that guilt be proved beyond a reasonable doubt. See *Perry*, 565 U.S. at 233.

Here, appellant highlighted for the jury during cross-examination that almost three years had passed since the murder and questioned the reliability of Ramos's identification. Likewise, defense counsel argued in closing arguments that the voice identification was unreliable, and the charge of the court instructed the jury that they were the sole judge of the believability of the witnesses and the weight to be given to their testimony. Because the jury was free to believe or disbelieve the in-court voice

identification, see *Perry*, 565 U.S. at 233; *McInturf*, 544 S.W.2d at 419; *Cox v. State*, 497 S.W.3d 42, 47 (Tex. App.—Fort Worth 2016, pet. ref'd), the trial court did not abuse its discretion when it allowed for the in-court voice exemplar.

We overrule appellant's first issue.

III. EVIDENTIARY SUFFICIENCY

By his second issue, appellant argues that the evidence was insufficient to support a finding that he shot Bucato.

A. Standard of Review & Applicable Law

In a sufficiency review, we consider the evidence in the light most favorable to the verdict to determine whether any rational finder of fact could have found the essential elements of the offense beyond a reasonable doubt. *Chambers v. State*, 580 S.W.3d 149, 156 (Tex. Crim. App. 2019); see *Brooks v. State*, 323 S.W.3d 893, 895 (Tex. Crim. App. 2010) (plurality op.) (citing *Jackson v. Virginia*, 443 U.S. 307, 319 (1979)). In our analysis, we defer to the trier of fact to fairly resolve conflicts in testimony, to weigh the evidence, and to draw reasonable inferences from basic facts to ultimate facts. *Hooper v. State*, 214 S.W.3d 9, 13 (Tex. Crim. App. 2007) (citing *Jackson*, 443 U.S. at 318–19). When the record contains conflicting inferences, we presume that the trier of fact resolved any such conflicts in favor of the prosecution, and we must defer to that resolution. *Padilla v. State*, 326 S.W.3d 195, 200 (Tex. Crim. App. 2010) (citing *Jackson*, 443 U.S. at 326). The trier of fact is the sole judge of the weight and credibility of the evidence. *Cox*, 497 S.W.3d at 47.

Sufficiency of the evidence is measured by the elements of the offense as defined by a hypothetically correct jury charge. *Broughton v. State*, 569 S.W.3d 592, 608 (Tex.

Crim. App. 2018) (citing *Malik v. State*, 953 S.W.2d 234, 240 (Tex. Crim. App. 1997)). Such a charge is 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*, 953 S.W.2d at 240. A hypothetically correct jury charge would tell the jury to find appellant guilty if he intended to cause serious bodily injury and committed a clearly dangerous act to human life when he discharged a firearm that caused the death of Bucato. See TEX. PENAL CODE ANN. § 19.02(b)(1). Where identity is an issue in the case, the identity of the perpetrator may be proved by direct or circumstantial evidence. *Earls v. State*, 707 S.W.2d 82, 85 (Tex. Crim. App. 1986). Appellant argues there is insufficient evidence that he fired the weapon that killed Bucato.

Here, it is undisputed that appellant was Reyna's boyfriend at the time of Bucato's murder and that he was present at the time of the shooting. Marin Garcia testified that, after Reyna was hit by Huape, Reyna stated she was calling her boyfriend; that the shooter, before he started shooting, asked "Who the fuck hit my girl?"; and that the shooter was the only individual with a gun. Shawn Garcia testified that she saw the shooter; that the shooter was the same person who said "You all are the ones fucking with my girl Rhonda?"; and identified appellant as the shooter. Ramos testified that she recognized appellant's voice as the one yelling questions outside of Huape's house inquiring about who attacked Reyna. Finally, Reyna testified that appellant confessed to her that he shot Bucato.² This evidence, viewed in the light most favorable to the verdict,

² Reyna was also charged with the murder. She testified that the State agreed to reduce the murder charge to an aggravated assault charge and to recommend ten years' community supervision in exchange for her truthful testimony at appellant's trial. Because Reyna was an accomplice, the State needed to

is sufficient to support a rational jury's finding beyond a reasonable doubt that appellant was the shooter. See *Threadgill v. State*, 146 S.W.3d 654, 663 (Tex. Crim. App. 2004); *Earls*, 707 S.W.2d at 85; *Gilmore v. State*, 397 S.W.3d 226, 240 (Tex. App.—Fort Worth 2012, pet. ref'd); *Trevino v. State*, 228 S.W.3d 729, 738 (Tex. App.—Corpus Christi—Edinburg 2006, pet. ref'd).

We overrule appellant's second issue.

IV. CONCLUSION

We affirm the trial court's judgment.

DORI CONTRERAS
Chief Justice

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TEX. R. APP. P. 47.2 (b).

Delivered and filed the
18th day of June, 2020.

corroborate her testimony about appellant's guilt. See TEX. CODE CRIM. PROC. ANN. art. 38.14 ("A conviction cannot be had upon the testimony of an accomplice unless corroborated by other evidence tending to connect the defendant with the offense committed; and the corroboration is not sufficient if it merely shows the commission of the offense."). Reyna's testimony was amply corroborated by the evidence described above.