In The
Court of Appeals
Seventh District of Texas at Amarillo

No. 07-19-00133-CR

RUBIN FRANCIS EDWARDS III, APPELLANT

V.

THE STATE OF TEXAS, APPELLEE

On Appeal from the 70th District Court
Ector County, Texas
Trial Court No. A-17-1523-CR; Honorable Denn Whalen, Presiding

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June 11, 2020

MEMORANDUM OPINION

Before QUINN, C.J., and PIRTLE and PARKER, JJ.

Following a plea of not guilty, Appellant, Rubin Francis Edwards III, was convicted by a jury of murder with an affirmative finding on use of a deadly weapon, a firearm. Punishment was imposed by the jury at confinement for life. Appellant timely filed a notice

of appeal.[1] In presenting this appeal, counsel has filed an *Anders*[2] brief in support of a motion to withdraw. We affirm Appellant's conviction and grant counsel's motion to withdraw.

In support of his motion to withdraw, counsel certifies he has conducted a conscientious examination of the record, and in his opinion, it reflects no potentially plausible basis for reversal of Appellant's conviction. *Anders v. California*, 386 U.S. 738, 744-45, 87 S. Ct. 1396, 18 L. Ed. 2d 493 (1967); *In re Schulman*, 252 S.W.3d 403, 406 (Tex. Crim. App. 2008). Counsel candidly discusses why, under the controlling authorities, the record supports that conclusion. *See High v. State*, 573 S.W.2d 807, 813 (Tex. Crim. App. 1978). Counsel has demonstrated that he has complied with the requirements of *Anders* and *In re Schulman* by (1) providing a copy of the brief to Appellant, (2) notifying him of the right to file a *pro se* response if he desired to do so, and (3) informing him of the right to file a *pro se* petition for discretionary review. *In re Schulman*, 252 S.W.3d at 408.[3] By letter, this court granted Appellant an opportunity to

[1] Originally appealed to the Eleventh Court of Appeals, this appeal was transferred to this court by the Texas Supreme Court pursuant to its docket equalization efforts. TEX. GOV'T CODE ANN. § 73.001 (West 2013). Should a conflict exist between precedent of the Eleventh Court of Appeals and this court on any relevant issue, this appeal will be decided in accordance with the precedent of the transferor court. TEX. R. APP. P. 41.3.

[2] *Anders v. California*, 386 U.S. 738, 87 S. Ct. 1396, 18 L. Ed. 2d 493 (1967).

[3] Notwithstanding that Appellant was informed of his right to file a *pro se* petition for discretionary review upon execution of the *Trial Court's Certification of Defendant's Right of Appeal*, counsel must comply with Rule 48.4 of the Texas Rules of Appellate Procedure which provides that counsel shall within five days *after* this opinion is handed down, send Appellant a copy of the opinion and judgment together with notification of his right to file a *pro se* petition for discretionary review. *In re Schulman*, 252 S.W.3d at 408 n.22, 411 n.35. The duty to send the client a copy of this court's decision is an informational one, not a representational one. It is ministerial in nature, does not involve legal advice, and exists after the court of appeals has granted counsel's motion to withdraw. *Id.* at 411 n.33.

exercise his right to file a response to counsel's brief, should he be so inclined. *Id.* at 409 n.23. Appellant did not file a response and the State did not favor us with a brief.

BACKGROUND

Appellant and the victim, his former girlfriend, had been living together in the victim's home for approximately one year. The relationship began to fade in late July or early August 2017, and when Appellant refused to leave the victim's house, she and her two children temporarily moved in with her parents.

According to the victim's mother, on August 5, 2017, she had a small family gathering that Appellant attended. The victim was at a separate function and called her mother afterwards. She was informed that Appellant was at the family gathering. She requested that he be asked to leave before she returned. He eventually left and she arrived later in the evening with her two children.

The evidence at trial established that on the same evening, the victim received a text message from Appellant threatening to "commit ten counts of capital murder"—ten being the exact number of people in the victim's mother's house at the time. A series of text messages from the following day revealed that the victim texted Appellant "to find some other living arrangements. The thing you said last night really scared the shit out of me." Appellant agreed to move out and after they argued by text messages, the victim offered to return $500 of his share of the mortgage payment which was all she could afford at the time.

In fear of Appellant, the victim enlisted her sister's fiancé to accompany her to the house to get some of her belongings and leave Appellant his money. She went to the

bank and withdrew money for Appellant. Afterwards, they went to her house to retrieve some of her belongings. According to the fiancé, when they arrived, the victim saw Appellant in his car across the street and yelled at him, and he drove away. She gathered some belongings and proceeded to leave when she noticed some trash she wanted discarded so her pets would not disturb it. The fiancé offered to take out the trash and exited through the front door. He went to a dumpster in the alley. When he returned, he noticed that Appellant's car was parked behind the victim's car blocking it in. He tried to re-enter the house through the front door but it was locked. The victim's sister called him around that time, and just before his phone battery died, he told her that the front door of the house was locked and he could not get in. He then heard the victim and Appellant arguing and went to a window to look inside. He saw "the flash of a gun" and heard a total of three shots.[4]

The fiancé forced his way in through the back door and saw both the victim and Appellant in the back bedroom. They had both been shot in the head. He tended to the victim but could not find a pulse. He then ran outside and ran up and down the block yelling for help but no one responded.

Meanwhile, the victim's mother, father, and sister drove to the victim's house when they were unable to reach her by telephone. The victim's sister used a key to gain entry and called out for her sister, but there was no answer. The mother then entered the house and proceeded to the bedroom where she saw her daughter's body in a pool of blood. She called 911. The victim's sister went to the victim's body to check for a pulse and try

[4] Three shell casings were discovered at the scene.

to lift her. That is when Appellant grabbed her by the ankle and would not let go. The victim's father managed to get Appellant to release his daughter's ankle and that is when she noticed a firearm underneath Appellant's body. She grabbed it and threw it on the bed to prevent Appellant from potentially using it against her.

Police and paramedics arrived on the scene. Appellant was taken to the hospital where he recovered from his wound. The subsequent police investigation concluded Appellant fired the fatal shot that killed the victim and he was eventually arrested and indicted for murder.

At trial, the deputy medical examiner testified that the cause of the victim's death was a gunshot wound to the head which she classified as an intermediate range shot—fired from approximately six inches to three feet. She confirmed that the wound was consistent with the victim leaning over or ducking.[5] The bullet entered through the victim's forehead and traveled in a downward trajectory through her neck, injuring the carotid artery and stopping in her lung. When asked for her opinion on the manner of death, the witness answered that it was a homicide—death at the hands of another—and not a self-inflicted wound.

A former police officer testified that he recovered a Smith and Wesson pistol at the scene of the shooting, the same firearm discovered underneath Appellant's body by the victim's sister, and it was introduced into evidence without objection.[6] A firearms expert

[5] When the victim's body was discovered, she was propped up against the foot of the bed and Appellant was on the floor next to her.

[6] The firearm was registered to the victim.

with the Texas Department of Public Safety determined that it was the firearm used to kill the victim.

A deputy who was assigned to guard Appellant while he was recovering in the hospital testified that Appellant mentioned on numerous occasions that he "killed that bitch. That bitch is dead." According to the deputy, Appellant's comments were not in response to any questioning on his part. During Appellant's case-in-chief, another officer assigned to guard Appellant testified that Appellant did not confess to murder in his presence. However, during cross-examination, he admitted he was not in the room "every single second." Appellant did not testify nor present any other witnesses.

The trial court presented its charge to the parties. The State did not object and defense counsel objected only to a paragraph on reasonable doubt which the trial court overruled. Following closing arguments, the jury deliberated and unanimously returned a verdict of guilty.

During the punishment phase, the State introduced evidence of a prior conviction for the lesser-included offense of misdemeanor assault after Appellant had been charged with aggravated assault. The victim's sister testified about the effect the victim's death had on her children and her entire family. Family photos were introduced into evidence.

During the charge conference at the punishment phase, defense counsel stated he had no objection to the proposed charge. Defense counsel argued to the jury that Appellant had no felony convictions and asked that it "do the right thing" for such a young man who "did something bad." The State's argument focused on the victim and requested the maximum sentence allowed. The jury assessed a statutorily authorized life sentence.

APPLICABLE LAW

A person commits murder if he intentionally or knowingly causes the death of an individual. TEX. PENAL CODE ANN. § 19.02(b)(1) (West 2019). Murder is a first degree felony punishable for life or for any term of not more than ninety-nine years or less than five years. *Id.* at § 12.32(a) (West 2019). A deadly weapon is defined as "a firearm or anything manifestly designed, made, or adapted for the purpose of inflicting death or serious bodily injury." *Id.* at § 1.07(a)(17)(A) (West Supp. 2019). A firearm is a deadly weapon *per se*. *Ex parte Huskins*, 176 S.W.3d 818, 820 (Tex. Crim. App. 2005). A deadly-weapon finding is appropriate when a firearm is used or exhibited in the commission of a felony. TEX. CODE CRIM. PROC. ANN. art. 42A.054(d) (West Supp. 2019) (authorizing the trial court to enter a deadly-weapon finding in its judgment when the deadly weapon is a firearm).

ANALYSIS

By the *Anders* brief, counsel represents that he has evaluated the underlying proceedings and reached the conclusion that there are no arguable grounds on which to reverse Appellant's conviction. We too have independently examined the record to determine whether there are any non-frivolous issues which might support the appeal. *See Penson v. Ohio*, 488 U.S. 75, 80, 109 S. Ct. 346, 102 L. Ed. 2d 300 (1988); *In re Schulman*, 252 S.W.3d at 409; *Stafford v. State*, 813 S.W.2d 503, 511 (Tex. Crim. App. 1991). We have found no such issues. *See Gainous v. State*, 436 S.W.2d 137, 138 (Tex. Crim. App. 1969). After reviewing the record and counsel's brief, we agree with counsel's assessment that there is no plausible basis for reversal of Appellant's conviction. *See Bledsoe v. State*, 178 S.W.3d 824, 826-27 (Tex. Crim. App. 2005).

CONCLUSION

The trial court's judgment is affirmed and counsel's motion to withdraw is granted.

Patrick A. Pirtle
Justice

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