Affirmed and Opinion filed December 16, 1999.

In The

Fourteenth Court of Appeals

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NO. 14-97-00993-CR

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CHRISTOPHER CLEVELAND MEULLION, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the 351st District Court
Harris County, Texas
Trial Court Cause No. 720,379

O P I N I O N

A jury convicted Christopher Cleveland Meullion, appellant, for the capital murder of Jason Ramirez and assessed punishment at life in the Texas Department of Corrections, Institutional Division. Meullion argues in five issues that: the evidence is legally and factually insufficient to support the judgment because the State failed to prove Meullion, not someone else, killed Ramirez; the trial court erred in refusing to include in the jury charge the lesser included charge of felony murder; and the independent impulse jury instructions; and the State's jury argument was improper. We affirm.

Facts

Jason Ramirez and Jimmy Coker, roommates at the University of Texas, were at home in Baytown for the weekend. While in Baytown, they drove to a friend's house, not realizing they had been followed by Meullion and his friends. When they stopped, Meullion, wearing a blue bandanna and carrying a gun, confronted Coker and threatened to blow his brains out. Meullion warned the roomantes to comply with his demands and told Coker not to try anything because his friends were following them in a pickup truck.

Meullion directed Coker to drive to Holloway Park. When they reached the park, Meullion forced both Coker and Ramirez to get out of the car and lie on the ground with their hands behind their heads. He then retrieved a flashlight from the pickup truck, which had followed them to the park, and led Coker and Ramirez to a bayou in the park. Meullion commanded the two to kneel by the bayou and put their hands behind their heads. He forced them to huddle closer together, until their shoulders were almost touching.

With the two kneeling before him, Meullion shot point-blank into Ramirez's head. Immediately, Coker started running. Meullion fired at him as he fled, and Coker was hit by several bullets. Even so, he managed to wade through the bayou to escape, and reach help.

After the shooting, Meullion and his two friends, Henderson and Henry, drove the pickup truck and Coker's car to a third friend's house. At the house, Meullion was heard to brag, "I'm a real G," after exiting his car. Because Meullion had difficulty in driving Coker's car, which had a standard transmission, another friend drove it to Meullion's grandparent's house. En route, Meullion asked Henry's girlfriend, "Are you mad at me because I just shot two people?" Once at his grandparent's house, Meullion and Henry hid the car behind a barn. Later that night, they stripped and burned the car.

Meullion, Henry and Henderson were apprehended at their high school the following Monday and interviewed by the police. During Meullion's interview he stated "I did it, I shot them." Additionally, Meullion gave the following statement:

> On Saturday, 4-13-96, at about 9:30 P.M. Ton Henry and Jayray Henderson came by my house and knocked on my door. They wanted me to come with them. Tony wanted the rims on a red car and Jayray wanted the

radio out of the red car that was at Penney's at the mall. We were going to follow the red car home and I was going to be the look-out while they hit the car. I didn't want to go at first but they kept on and I went with them. Before we went to the mall we went to Terence Arnold's house, who lives on Woodstone, to get a gun. I stayed in the bed and Jayray and Tony went inside Terence's house. In about five minutes they came back out with the gun. We went to the mall and on the way to the mall Tony pulled the gun from under his seat. We were in Jaytray's green extended cab p/u. Jayray was driving, Tony was in the front passenger's seat and I was laying down in the bed of the truck. When we got to the mall we didn't see the red car they wanted. We drove around and Tony saw a dark colored car in front of Penney's with some nice rims and he said he wanted the rims on that car. Jayray pulled up right in front of the dark colored car for a few seconds and then we saw what looked like a mexican dude to me walking toward the dark colored car with the nice rims. We drove off and the mexican guy got into the car and we followed him over to Foley's. The M/M got out and went into Foley's and we waited in the parking lot. After a while the M/M came out and another guy, either white or Mexican, was with him. They got into the dark car and left and we followed them. They stopped at the Cheveron station and Garth and Baker Rd. and we stopped in Kroger's parking lot where we could watch them while they got gas. While we parked there Tony handed me the gun through the back window. It was a Chrome .380 Cal.. the car left the Cheveron and we followed it to a house. I don't know where it was because I was laying down in the bed of the truck. Before we stopped Jayray knocked on the glass and told me to get ready. Jayray stopped his truck where it blocked the car in the driveway and then it got out of the truck and went to the car with the gun in my hand. I got into the back seat of the car from the driver's side. I led the two guys out of the car and as I held the gun on them. It was dark where we were. I signalled Jayray and Tony to come to where we were.

I had the two guys from the car lay face down on the ground. Jayray and Tony came to where I was and I had Jayray hold the gun on them while I tried to start the car. I tried to get the car started but I couldn't so I got the gun back from Jayray and I told the two guys to get back in the car. I had the same guy driving as before. I had him drive to the park of Raccoon while I held the gun on him and Jayray and Tony followed in the truck. We pulled into the park and stopped and I told them to get out. They got out and I took them to the Back of the park. Jayray and Tony had parked and got out of the truck and were looking at the stuff in the car while I was walking the two guys away. I don't know how far away from the park we were but we were out of sight form the park when I had the two guys top. I told them to get on their knees and they did. I didn't plan on shooting anybody but Jayray told me they seen my face and they knew my name so I didn't have any choice but to shoot

> them. When I shot the one dude in the back of the head the other one jumped up and started running away toward Jenkins Park. I think I shot at him three times as he was running away. I ran back to Jayray's truck and gave him the gun. I didn't tell them what happened and they didn't ask me. Jayray said to meet him at T's (Terrence's) house. I got into the car and Jayray and Tony got into the truck. They drove out of the park first and I don't know which way they turned because I was trying to get the car in gear so I could leave. When I finally got the car started I turned left on Raccoon and went to Terrence's house on Woodstone. At Terrence's house I got out of the car and had Kendal Cagan drive the car to my house on Archer Rd. And I rode with home in the bed of Jayray's truck. When we got to my house Kendal drove the car and parked it at the place where it was later burned. Jayray and Tony took Kendal back to his house while I stayed at my house. Terrence came to my house and we went back to the car and stripped it. We took the radio, the CD player, his two 15" JBL speakers mounted in boxes. I gave Terrence a white plastic bucket of lighterfluid or pain thinner to put on the car so we could burn it. While he poured the stuff on the car I went to my house to get some matches. When I got back with the matches I set the car on fire and went on home and went to bed and Terrence left and went back to his house. I let Terrence have everything, the radio, the CD player, and speakers, because I didn't want to have anything else to do with it. Tony got he cellular phone from the car before he left earlier.

At trial, Meullion contended this confession was the result of duress and should not have been admitted into evidence. Even so, the testimony up to the point where Coker and Ramirez were on the ground, including that Meullion initially entered the car with the gun, however, is undisputed by the parties. Plus, Coker testified and identified Meullion's voice as the same person who initially entered his car and who forced Ramirez and him to kneel before shooting them.

Meullion testified at trial that while he did commit an aggravated robbery, he neither shot nor had the intent to shoot anyone. And although he went to Coker's car with the gun, he felt intimidated by his friends in the truck. Meullion also testified that it was Tony Henry who wore the bandana, took Coker and Ramirez to the bayou and killed Ramirez and shot Coker. Meullion contended that Henry and his friend Henderson fabricated the story to blame him for the shooting.

Legal Sufficiency

In his first issue, Meullion argues the evidence is legally insufficient to support his conviction, because the State failed to prove he, not Tony Henry, killed Ramirez. To review Meullion's legal insufficiency point, we look at the evidence in the light most favorable to the verdict and determine whether any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. *See Jackson v. Virgina*, 443 U.S. 307, 319, 99 S. Ct. 2781, 2789 (1979); *Mason v. State*, 905 S.W.2d 570, 574 (Tex. Crim. App. 1995). The jury is the *exclusive* judge of the credibility of the witnesses and of the weight to be given their testimony. *See Jones v. State*, 944 S.W.2d 642, 647 (Tex. Crim. App. 1996). The jury is also permitted to weigh the evidence and draw reasonable inferences therefrom. *See Jackson*, 443 U.S. at 319. Likewise, reconciliation of conflicts in the evidence is within the exclusive province of the jury. *See id*. This standard of review is the same for both direct and circumstantial evidence cases. *See Chambers v. State*, 711 S.W.2d 240, 245 (Tex. Crim. App. 1986); *Myles v. State*, 946 S.W.2d 630, 636 (Tex. App.–Houston [14th Dist.] 1997, no pet.).

Meullion argues a rational trier of fact could not have concluded that he committed capital murder, because, at the moment he contradicted his confession, there appeared a "solidly supported inference that someone other than Meullion actually shot and killed [Ramirez]," citing *Wilson v. State*, 654 S.W.2d 465 (Tex. Crim. App. 1983) (en banc) and *Clark v. Procunier*, 755 F.2d 394, 396 (5th Cir. [Tex.] 1985).

Even if we were able to consider these inferences, Meullion testified he was the one who carjacked Coker and Ramirez. Additionally, Coker testified that the person who shot him and Ramirez was the same person who carjacked them. Thus, the jury could infer Meullion was the shooter because he was the one who carjacked them. *See Jackson*, 443 U.S. at 319. The jury was authorized to convict Meullion for Ramirez's murder and disregard his testimony and any evidence to the contrary. *See id*. Additionally, in our legal sufficiency review we must disregard all inferences that controvert the verdict. *See id; Mason*, 905 S.W.2d at 574. Thus, we do not consider competing equal inferences, if any, and consider

only competing testimony that the jury was free to disregard. *See Jackson*, 443 U.S. at 319.

Accordingly, there was legally sufficient evidence to support the jury's verdict. We overrule Thus, Meullion's first issue is overruled.

Factual Sufficiency

Meullion's second issue raises the factual sufficiency of the evidence. When reviewing for factual sufficiency, we consider all of the evidence without the prism of "in the light most favorable to the prosecution," and set aside the 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). This review, however, must be appropriately deferential so as to avoid substituting our judgment for that of the jury. *See id*. Accordingly, we must consider all of evidence, both that which tends to prove or disprove a vital fact in evidence. *See id*. Further, "[w]hat weight to give contradictory testimonial evidence is within the sole province of the jury, because it turns on an evaluation of credibility and demeanor." *Cain v. State*, 958 S.W.2d 404, 408 (Tex. Crim. App. 1998).

There are three major principles to guide us when conducting our factual sufficiency review. *See Cain*, 958 S.W.2d at 407-08. First, is the principle of deference to jury findings. *See id*. Second, we must detail the evidence relevant to our review, support a finding of factual insufficiency by providing a detailed explanation of that finding so that the Court of Criminal Appeals can ensure that we accorded the proper deference to the jury's findings. *See id*. Third, we are required to review all the evidence, not in the light most favorable to either party. *See id*.

After reviewing all the evidence, we find the jury's verdict is not contrary to the overwhelming weight of the evidence as to be clearly wrong and unjust. Accordingly, we overrule Muellions' second issue.

Felony Murder Instruction

Meullion's third issue argues the trial court erred by refusing to give a felony murder instruction, which is a lesser included charge for capital murder. To establish he was entitled to an instruction on felony murder, Meullion must establish that (1) felony murder is a lesser included offense of capital murder and (2) there was evidence Meullion was guilty *only* of felony murder. *See Moore v.* State, 999 S.W.2d 385, 404 (Tex. Crim. App. 1999); *Fuentes v. State*, 991 S.W.2d 267, 272 (Tex. Crim. App. 1999).

The credibility of the evidence and whether it conflicts with other evidence or is controverted may not be considered in determining whether an instruction on a lesser-included offense should be given. *See Saunders v. State*, 840 S.W.2d 390, 391 (Tex. Crim. App. 1992). Therefore, if the record reflects some evidence that refutes or negates the aggravating element of the greater offense or if the evidence is subject to different interpretations, the trial court must submit a lesser-included charge to the jury. *See id*. at 391-92. Anything more than a scintilla of evidence is sufficient to entitle a defendant to a lesser charge. *See Bignall v. State*, 887 S.W.2d 21, 23 (Tex. Crim. App. 1994).

In this case, the evidence does not support the conclusion that Meullion was *only* guilty of felony murder. In fact, Meullion testified he did not commit any murder, thus, he was not entitled to a lesser included charge. *See id*. at 24. Additionally, the evidence does not support the conclusion that Meullion was *only* guilty of felony murder. The distinguishing element between felony murder and capital murder is the intent to kill. *See Abanandus v. State*, 866 S.W.2d 210, 213 (Tex. Crim. App. 1993). Felony murder is an *unintentional* murder committed in the course of committing a felony. *See* TEX. PEN. CODE ANN. § 19.02(b)(3). Capital murder, in this case, however, is an *intentional* murder committed during the course of a robbery. *See id*. at § 19.03(a)(2). The evidence shows Meullion walked Coker and Ramirez into the dark, commanded them to kneel, and shot Ramirez execution-style in the back of the head. We conclude there is no evidence upon which a jury could rationally have found that Meullion did not intend to kill Ramirez when he shot him point-blank in the head. *See Cantu v. State*, 939 S.W.2d 627, 646 (Tex. Crim. App. 1997).

Accordingly, Meullion was not entitled to a charge on the lesser included offense of felony murder. We overrule Meullion's issue number three.

Independent Impulse Instruction

In his fourth issue, Meullion argues the jury should have been instructed about independent impulse. The "independent impulse" doctrine recognizes "that an accused, though he was admittedly intent on some wrongful conduct, nevertheless did not contemplate the extent of criminal conduct actually engaged in by his fellows, and thus cannot be held vicariously responsible for their conduct." *Mayfield v. State*, 716 S.W.2d 509, 513 (Tex. Crim. App. 1986); *Walzer v. State*, 828 S.W.2d 123, 125 (Tex. App.–Houston [14th Dist.] 1992, no pet.). If the evidence raises a question whether the offense actually committed was committed in furtherance of the object felony, or was one that could have been anticipated, then the jury should be charged on the theory of independent impulse. *See Mayfield*, 716 S.W.2d at 515. An independent impulse instruction permits the jury to acquit an accused if he did not, and reasonably could not have, anticipated commission of the actual offense. *See Givens v. State*, 749 S.W.2d 954, 959-60 (Tex. App.–Fort Worth 1988, pet. ref'd).

If the evidence raises a question "whether the offense actually committed was perpetrated in furtherance of the object felony ... a timely requested affirmative instruction ought to be submitted to the jury." *Id*. at 515. However, no instruction is required where a defendant claims "he never agreed to commit any offense at all . . . ." *Id*; *see Graves v. State*, 968 S.W.2d 386, 388 (Tex. App.–Tyler 1997, pet. ref'd); *Garcia v. State*, 882 S.W.2d 856, 860-61 (Tex. App.–Corpus Christi 1994, no pet.). At trial, however, Meullion testified that he was not a party to an agreement to commit any offense against the deceased, which negates the need for a charge on the theory of independent impulse. *See Mayfield*, 716 S.W.2d at 516.

Additionally, an independent impulse instruction, traditionally requested by the prosecution, must be preceded (or accompanied) by a law of the parties instruction. *See* MICHAEL B. CHARLTON, TEXAS PRACTICE: TEXAS CRIMINAL LAW § 5.3 (West 1994).

Neither Meullion nor the State requested a law of the parties instruction. Thus, Meullion waived his opportunity to complain about the absence of the independent impulse instruction because he did not request the law of the parties instruction. Plus, the requested independent impulse instruction would have been an impermissible comment on the weight of the evidence because it singled out defendant's testimony for the jury. *See Matamoros v. State*, 901 S.W.2d 470, 477 (Tex. Crim. App. 1995). Accordingly, we overrule Meullion's point of error number four because the trial court properly denied Meullion's request for an instruction.

Jury Argument

In his fifth point, Meullion complains that the State's jury argument was improper. Proper jury argument is limited to a summation of the evidence, reasonable deductions from the evidence, an answer to argument by opposing counsel, or a plea for law enforcement. *See Wilson v. State*, 938 S.W.2d 57, 59 (Tex. Crim. App. 1996). A statement made during jury argument must be analyzed in light of the entire argument, and not isolated sentences. *See Castillo v. State*, 939 S.W.2d 754, 761 (Tex. App.–Houston [14th Dist.] 1997, pet. ref'd); *Williams v. State*, 826 S.W.2d 783, 785-86 (Tex. App.–Houston [14th Dist.] 1992, pet. ref'd). An improper jury argument constitutes reversible error only if, "in light of the record as a whole, the argument is extreme or manifestly improper, violative of a mandatory statute or injects new facts, harmful to the accused, into the trial." *Felder v. State*, 848 S.W.2d 85, 95 (Tex. Crim. App. 1992).

Here the prosecutor made the following argument:

> This is a dangerous, cold blooded killer sitting over here, folks. This was a horrible crime. Think about how brutal it was. Think about the terror and fear Jason [Coker] and Jimmy [Ramirez] went through that night. You know the fear of crime and crimes like this one has forced all of us to change the way we live our lives. Nowadays people are scared to stop off at the Stop and Go on the way home and get a carton of milk or stop and gas up the car for fear of something like that. Every time your husbands, wives, sons, daughters leave the house, we are scared. We wonder if they are coming back because of stuff like this. People are scared to take their families out shopping in the

> malls. Why? Why? Because of dangerous killers like this man sitting right here, Christopher Cleveland Meullion.

This argument is a proper plea for law enforcement and we conclude it did not constitute error. *See, e.g., Smith v. State*, 846 S.W.2d 515, 517 (Tex. App.–Houston [14th Dist.] 1993, pet. ref'd). For example, our court has held the following argument did not constitute error: "How many times have you been out on the streets? You know what its like out there. There is an ongoing fear in our community. You try to lock your house, your windows, your cars. You worry about your family's safety because that's the way the things are because of crime." *Id*; *see Jefferson v. State*, 830 S.W.2d 320, 325 (Tex. App.–Austin 1992, pet. ref'd). Thus, we overrule Meullion's fifth issue.

Having overruled all five of Meullion's appellate issues, we affirm.

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Norman Lee
Justice

Judgment rendered and Opinion filed December 16, 1999.

Panel consists of Justices Sears, Cannon, and Lee.*

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* Senior Justices Ross A. Sears, Bill Cannon and Norman Lee sitting by assignment.