Moya v. State

2005 | Cited 0 times | Court of Appeals of Texas | June 16, 2005

MEMORANDUM OPINION[1]

Before Justices Rodriguez, Castillo, and Garza

A jury convicted appellant Hector Moya of murder.[2] The jury assessed punishment of a ten year term in the Institutional Division of the Texas Department of Criminal Justice and a $5,000 fine. By one issue, Moya asserts that the evidence was factually insufficient to support the conviction. We affirm.

I. BACKGROUND

Before dying from a single gunshot wound to his neck, Victor Michael Sanchez implicated Moya and a man named "Juan." Moya, the victim's roommate, gave a videotaped statement to police and testified at trial, denying involvement in the murder.

II. FACTUAL SUFFICIENCY

A. Scope and Standard of Review

A factual-sufficiency review begins with the presumption that the evidence supporting the jury's verdict is legally sufficient, that is, sufficient under Jackson v. Virginia, 443 U.S. 307, 319 (1979). See Clewis v. State, 922 S.W.2d 126, 134 (Tex. Crim. App. 1996) (en banc). In a factual sufficiency review, the appellate court views all the evidence in a neutral light and determines whether evidence supporting the verdict is too weak to support the finding of guilt beyond a reasonable doubt or if evidence contrary to the verdict is strong enough that the beyond-a-reasonable-doubt standard could not have been met. Threadgill v. State, 146 S.W.3d 654, 664 (Tex. Crim. App. 2004) (en banc). A clearly wrong and unjust verdict occurs where the jury's finding is "manifestly unjust," "shocks the conscience," or "clearly demonstrates bias." Prible v. State, No. AP-74,487, 2005 Tex. Crim. App. LEXIS 110, at *16-*17 (Tex. Crim. App. January 26, 2005) (designated for publication). In conducting a factual sufficiency review, we review all the evidence. Cain v. State, 958 S.W.2d 404, 408 (Tex. Crim. App. 1997). We must consider the most important evidence that the appellant claims undermines the jury's verdict. Sims v. State, 99 S.W.3d 600, 603 (Tex. Crim. App. 2003). However, we approach a factual-sufficiency review with appropriate deference to avoid substituting our judgment for that of the fact finder.[3] Johnson v. State, 23 S.W.3d 1, 6-7 (Tex. Crim. App. 2000) (en banc). Every fact need not point directly and independently to the accused's guilt. Vanderbilt v. State, 629 S.W.2d 709, 716 (Tex. Crim. App. 1981). A conclusion of guilt can rest on the combined and cumulative force of all the

incriminating circumstances. Id.

Our neutral review of all the evidence, both for and against the challenged elements, looks to determine whether proof of guilt is so obviously weak as to undermine confidence in the jury's determination, or whether proof of guilt, although adequate if taken alone, is greatly outweighed by contrary proof. See Zuniga v. State, 144 S.W.3d 477, 484-85 (Tex. Crim. App. 2004); see also Zuliani v. State, 97 S.W.3d 589, 593-94 (Tex. Crim. App. 2003). We remain mindful of the jury's role to resolve conflicts in testimony. See Mosley v. State, 983 S.W.2d 249, 254 (Tex. Crim. App. 1998) (en banc) (holding that questions concerning the credibility of witnesses and the weight to be given their testimony are to be resolved by the trier of fact); see also Esquivel v. State, 506 S.W.2d 613, 615 (Tex. Crim. App. 1974). We must assume that the fact finder resolved conflicts, including conflicting inferences, in favor of the verdict, and must defer to that resolution. Matchett v. State, 941 S.W.2d 922, 936 (Tex. Crim. App. 1996) (en banc).

B. Hypothetically Correct Jury Charge

We measure the factual sufficiency of the evidence against a hypothetically correct jury charge.[4] Adi v. State, 94 S.W.3d 124, 131 (Tex. App.-Corpus Christi 2002, pet. ref'd). A hypothetically correct 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 restrict its theories of liability, and adequately describes the particular offense proof. Malik v. State, 953 S.W.2d 234, 240 (Tex. Crim. App. 1997); Cano v. State, 3 S.W.3d 99, 105 (Tex. App.-Corpus Christi 1999, pet. ref'd). A hypothetically correct jury charge would not simply quote from the controlling statute. Gollihar v. State, 46 S.W.3d 243, 254 (Tex. Crim. App. 2001). Its scope is limited by the statutory elements of the offense as modified by the charging instrument. See Curry v. State, 30 S.W.3d 394, 404 (Tex. Crim. App. 2000).

Murder is a "result of conduct" offense. Cook v. State, 858 S.W.2d 467, 470 (Tex. Crim. App. 1993) (en banc). We must decide whether a rational trier of fact could have found beyond a reasonable doubt that Moya (1) intentionally or knowingly caused Sanchez's death, TEX. PEN. CODE ANN. § 19.02 (b)(1) (Vernon 2003), or (2) intended to cause serious bodily injury and committed an act clearly dangerous to human life that caused his death, Id. § 19.02 (b)(2) (Vernon 2003). A person acts intentionally with respect to the result of his conduct when it is his conscious objective or desire to cause the result. Id. § 6.03(a) (Vernon 2003). A person acts knowingly with respect to the result of his conduct when he is aware his conduct is reasonably certain to cause the result. Id. at § 6.03(b) (Vernon 2003).

In determining whether an accused participated as a party in an offense, a fact finder may examine the events occurring before, during, and after the commission of the offense and rely on actions of the accused that show an understanding and common design to commit the offense. Hanson v. State, 55 S.W.3d 681, 690 (Tex. App.-Austin 2001, pet. ref'd). Thus, conviction was authorized under the evidence in this case if a rational jury could find that Moya intentionally caused Sanchez's death,

either as a principal or as a party. See TEX. PEN. CODE ANN. § 19.02(b)(1) & (2) (Vernon 2003); see also Hanson, 55 S.W.3d at 690. A person is criminally responsible as a party to an offense if the offense is committed by his own conduct, by the conduct of another for which he is criminally responsible, or by both. Tex. Pen. Code Ann. § 7.01 (Vernon 2003). A person is criminally responsible for an offense committed by another if, with 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. Id. § 7.02(a)(2) (Vernon 2003).

Moya was charged under the law of parties. Accordingly, the jury could convict him if it found that he was "present at the commission of the offense and encourage[d] its commission by words or other agreement." King v. State, 29 S.W.3d 556, 564 (Tex. Crim. App. 2000) (en banc); Ransom v. State, 920 S.W.2d 288, 302 (Tex. Crim. App. 1996) (en banc).

C. Inferences of Guilt

In addition to the court's charge, we note that mental states may be inferred and proven from acts done, words spoken, and the surrounding circumstances. See Ledesma v. State, 677 S.W.2d 529, 531 (Tex. Crim. App. 1984) (en banc). Intent, in particular, is often shown by acts done, words spoken, and conduct of the accused at the time of the offense. See Dues v. State, 634 S.W.2d 304, 305 (Tex. Crim. App. 1982) (panel opinion); see also Conner v. State, 67 S.W.3d 192, 197 (Tex. Crim. App. 2001). Evidence of flight is admissible as a circumstance from which a jury may draw an inference of guilt. Bigby v. State, 892 S.W.2d 864, 883 (Tex. Crim. App. 1994) (en banc). Proof of intent generally relies on circumstantial evidence. See Dillon v. State, 574 S.W.2d 92, 94 (Tex. Crim. App. 1978).

D. The Evidence

Viewed in a neutral light, the evidence showed that, on or about July 23, 2003, at approximately 2:00 a.m., police responded to a report of a shooting at Sanchez's apartment complex. The first officer at the scene, Javier Cantu, observed Sanchez prone on a second floor balcony bleeding profusely from the left side of his neck. Sanchez was partially inside his neighbors' apartment,[5] and his neighbors were tending to him. Cantu applied pressure to the wound to control the bleeding and allow Sanchez to breathe. Cantu asked Sanchez who he was, and Sanchez identified himself. The jury heard the following:

Q: . . . And then what did you ask him after that?

A: I asked him what had happened. He stated he was shot.

Q: Okay. . . . Did he indicate who shot him?

A: I then went and asked him who shot him. He stated that his roommate and a second . . . . That his

roommate and a second male shot him.

Q: Okay. Did he identify who his roommate was?

A: Yes, he did.

Q: And who was his roommate?

A: He stated his roommate was Hector Moya.

Q: Okay. And did he state about a second individual?

A: Yes, he did.

Q: And who was that?

A: He said that Hector had come over with another guy by the name of Juan.

Q: Okay. Did he identify who this Juan person was . . . other than the name of Juan?

A: He said he knew who he was, but he didn't know the-last name.

Q: Okay. Did he give you any description of this person named Juan or anything of that nature?

A: Yeah. He said . . . he was a crack head . . . that had gone over and shot him for a payback for Juan going to jail. . . . He stated that Juan said this, that he had gotten arrested at a drug house on Navigation and that the crack house had gotten closed down because of this and he had gone to jail and it was payback for that.

Q: Did he indicate whether it was Juan who shot him or his roommate, Hector Moya?

A: He stated that Juan had shot him, that Hector had brought Juan over and that Juan had shot him.

Q: Okay. Did he indicate that he observed Hector Moya in the room with Juan at the time?

A: Yes. He said that both of them were in the room.

Cantu further testified that Sanchez said Juan believed that Sanchez had tipped off police regarding the drug house where Juan was arrested. When Cantu asked the location of the residence on Navigation, Sanchez said he did not know.

Once paramedics removed Sanchez, still alive, from the scene, Cantu proceeded into Sanchez's apartment. The lights were on. Cantu observed a trail of blood from Sanchez's blood soaked bed to the doorway. He saw a sofa cushion on the bed with a bullet hole in it, evidencing an attempt to muffle the shot.

Sanchez's neighbor, Daniel Gatchel, testified that he heard yelling next door and also heard what appeared to be a closet door slamming twice in succession. He testified the sound was strange. He also heard footsteps running down the stairs leading to the balcony outside the apartment. Shortly after, he heard "someone pounding on his door." Gatchel thought someone was trying to break in. He called police. He looked outside and recognized Sanchez leaning against the door. Gatchel opened the door and helped Sanchez to the balcony floor. The jury heard the following:

Q: You were able to hear the conversation between the officer and Mike[6] ?

A: Yes, I was.

Q: And the officer asked Mike what happened?

A: Yes.

Q: And what did you hear?

A: He said that his roommate, Hector, and he spelled out Moya, M-o-y-a, and a person named Juan had come in and that Juan had just gotten out of prison. He mentioned that they were the ones that-Juan had shot him and after that, I moved aside with my wife to let the police do what they were doing . . . .

Q: Okay. . . . You said you listened to part of the conversation. Did you hear anything mentioned about Navigation Street or anything like that?

A: Oh, yes. He had mentioned that it had been a payback for Navigation, was his exact words, and that stuck in my mind because I had never heard of Navigation Street and it was an enigma.

Gatchel testified that Moya was living in Sanchez's apartment. Debra Gatchel testified she heard "Mike [say] he had been shot by a-two people named Hector and then a gentleman named Juan." When asked if Sanchez specifically mentioned "Hector" by name, she answered, "Yes, sir, he mentioned his name and spelled it." The jury heard:

Q: Okay. Did he say both of them shot him or did he indicate there was one that shot him?

A: He-he didn't say at that point, not that I recall, who pulled the trigger, no. . . .

Q: What did you hear directly from Mike? That's what we're trying to get at.

A: What I heard directly from Mike was . . . I'm trying to remember his exact words. He said it was Hector Moya, and he spelled out his name, and then a name Juan-man named Juan. He could not remember his last name, but he had just been released after a drug bust on Navigation.

Sanchez asked the couple to call his wife, his father, and his employer. He directed them to his billfold for the telephone numbers.

Debra Gatchel further testified that the door has a one-way lock that can only be opened from inside the apartment. A photograph of Sanchez's apartment door shows a deadbolt lock on the exterior and a lever directly opposite the lock on the interior side of the door.[7] The victim's brother, Ernest Sanchez, testified that Sanchez always locked his doors and toward "the end," Sanchez locked his bedroom door because he "started getting nervous of his roommate" and "feared his roommate." He admitted, however, that the victim could not lock the door to the bathroom shared with Moya.

Crystal Chandler, testified that her husband, the victim, locked his bedroom door and the front door. She was getting ready to return to live in the apartment and Moya was to vacate within a week. The roommates were having problems, she stated. Officer Tim Revis testified that Sanchez's bedroom door and the exterior door showed no signs of forced entry. He found a crack cocaine pipe and plastic baggies commonly used to package controlled substances in Moya's bedroom.

On the date of the shooting, Ernest arrived at the victim's apartment about 7:00 a.m., after leaving the hospital where the victim was taken. About an hour and a half later, an unidentified driver of a brown car dropped Moya off at the complex. Moya was shirtless and shoeless. Ernest held him for police. Moya appeared "like he did not know what was going on," because he was a "drug addict" and "not in his right mind."

Ernest admitted he waited until December 2003, to tell police investigating his brother's murder about his own drug addiction, his acquaintance with Moya, and drug purchases from "Juan" on Navigation Street. He testified that he met Moya about a year and a half before the trial. The two worked and socialized together. The two smoked crack cocaine together. Moya bought the cocaine "because of the connections that he had to purchase the drugs." The two went two or three times to "Juan's house" on Navigation Street, near the freeway, to buy cocaine. Ernest did not know "Juan," but Moya "would say, 'I'm going to go over there with Juan,' and he'd get off, . . . he would go up to the house and purchase from the doorway," "face to face with Juan." Ernest would remain in the vehicle. Ernest testified that his brother was aware of his drug use with Moya and "did not like it at all." The victim requested that Ernest vacate the apartment because of the "partying," and Moya moved in a week later. Ernest testified that the victim began using cocaine and told him he (the victim) went with Moya to the Navigation Street house. He further testified he did not know and could not identify "Juan."

The State adduced evidence to show that, on April 28, 2003, Juan Gonzalez was arrested for possession of a firearm by a felon at a "known crack house" on Margaret Street, which intersects with Navigation Street. Police seized about five grams of crack cocaine from his vehicle and his shirt pocket. Juan was released from jail on July 6, 2003. After Ernest disclosed knowledge of a drug house in the area, officer Revis had him identify the house where Moya purchased drugs. Ernest identified the house on Margaret Street where Juan had been arrested in April. Officer Revis did not inform Ernest about Juan's April arrest.

Moya's videotaped statement to police was admitted in evidence and shown to the jury. In his statement, Moya denied he knew "Juan." Officer Revis testified that Moya did not appear to be under the influence of a controlled substance when he gave the statement at about 1:00 p.m. on the date of the shooting. Other than the victim's statement, officer Revis testified that there was no evidence to show Moya was at the apartment.

At approximately 3:20 a.m. on the date of the shooting, officer Joe Vasquez arrived at a scene responding to a report of an abandoned vehicle on fire. Paperwork in the vehicle belonged to Hector Moya, who was not present at the scene.[8] However, a fire department investigation concluded that the fire was accidental, caused by pouring gasoline into the carburetor to prime it.

Representatives from Moya's employer testified that he tested negative for controlled substances in 2002. Moya and the victim worked together and appeared to be friends. Moya's brother, Ricky, testified that on the day before the shooting, Moya spent most of the time with their cousin, Rey Moya, and him. Rey was driving Moya's truck because Moya had been drinking and did not want to risk a job opportunity.[9] Ricky was left at his sister's house at around 10 p.m. He next saw Moya at about 3:30 a.m. when he awoke. Moya was washing his hands because they smelled of gasoline. Moya told him his truck caught fire. Moya was concerned about the truck, but Ricky told him to leave it alone because Moya "was way too drunk and . . . that was part of the reason that it caught on fire was that he was drunk and had been trying to prime it." They both went to bed. When Ricky woke up around noon, Moya was gone. Christopher Lara, Moya's cousin, testified that Rey, Ricky, and Moya were at a bar and grill until it closed at 2:00 a.m. at the time in question. From there, they gathered at his mother's house until 2:30 or 3:00 a.m. At that time, Moya "went home." April Sallinger testified that Moya's sister asked her to drive Moya to his apartment, and she did at around 11:30 a.m. Moya appeared normal.

Moya testified in his own defense. He testified that before his honorable discharge from the Marines, he served in Iraq. He met the victim "Mike" in early 2002. He moved into the apartment in April 2003 at Ernest's request, because Sanchez's check was insufficient to pay for the rent and one bedroom was available. Moya had been living in a hotel near work. Moya admitted he smoked crack cocaine and "partied" with the Sanchez brothers at different times. Because they were not working, he and Sanchez used drugs almost weekly. He testified the crack pipe found in the apartment belonged to Sanchez, but they both used it. Moya had heard of "Juan" and saw him once. Sanchez considered

Juan his friend. Sanchez bought drugs from Juan. Sanchez took Moya to the house on Margaret street, and Moya saw Juan there. At the same time, Moya saw police activity and told Sanchez to leave. Moya walked in to the house but "didn't want nothing to do with that guy [Juan]." Sanchez occasionally lent his car to "dope dealers" in exchange for drugs.

Moya further testified that, in April 2003, Sanchez was beat up once by people to whom Ernest owed money. People called Sanchez to collect money. Sanchez tried to collect from Ernest, who became angry. A woman named "Sonia," a friend of Juan's, lived with them in the apartment in April because she needed a place to stay. She had a key and so did Crystal, Sanchez's wife. The jury heard from Moya:

Q: Have you been aware that we had this dying declaration issue?

A: Yes, sir.

Q: Do you-Can you explain that dying declaration?

A: No, sir.

Q: But you're telling this jury that you were not present-

A: Yes, sir.

Q: -at the time that he was shot?

A: That's correct.

Q: You weren't with Juan or anybody that night?

A: No, sir, I've never been with Juan anywhere.

Moya further testified, "I wasn't involved and I don't know Juan. I know who he is. I've seen him on two occasions." Moya later testified that the only Juan he "had ever heard of was supposed to be in jail."

E. Discussion

The State presented evidence on both principal and party theories. The jury charge contained an instruction on both theories. Thus, the charge authorized the jury to find Moya guilty if he acted either as a party or as a principal to the offense. The jury rendered a general verdict of guilty. Thus, if evidence of guilt is sufficient, we will affirm the verdict based on either theory. See Rabbani v. State,

847 S.W.2d 555, 558 (Tex. Crim. App. 1992) (en banc); Edwards v. State, 106 S.W.3d 833, 839 (Tex. App.-Dallas 2003, pet. ref'd) (holding that if evidence of guilt is sufficient either as principal or as party, appellate court must affirm jury's verdict); see also Kitchens v. State, 823 S.W.2d 256, 259 (Tex. Crim. App. 1991).

1. Identity

Moya denied he shot Sanchez. He denied he was present when the shooting occurred. He provided alibi evidence. The jury heard Moya deny he knew Juan, admit he saw him once at a crack house, and admit he saw him twice. Where identity is an issue in the case, the identity of the perpetrator may be proved by direct or circumstantial evidence. Earls, 707 S.W.2d at 85 ("Evidence as to the identity of the perpetrator of an offense can be proved by direct or circumstantial evidence.").

Sanchez's statement qualifies as a dying declaration.[10] TEX. R. EVID. 804(b)(2); Thomas v. State, 699 S.W.2d 845, 853 (Tex. Crim. App. 1985). Evidence places the victim in his bed when shot. Three detached witnesses corroborated that Sanchez identified Juan as the shooter and placed Moya in the room when the shooting occurred. Evidence showed that Sanchez always locked the apartment. Access inside was solely by using a key from the outside or turning the lever on the inside. No evidence exists of a forced entry either to the apartment or to Sanchez's room.

2. Intent

Moya denied that he and Sanchez were experiencing difficulties. Evidence shows that Sanchez locked his bedroom door because he feared Moya. Sanchez had requested that Moya vacate the apartment within a week. Juan, by all accounts a drug dealer, sold cocaine consumed by Moya and Sanchez. Two months before the shooting, Juan was arrested for a felon in possession offense. At the time of the arrest, cocaine was seized from his person and his vehicle, while outside the crack house near the intersection of Margaret and Navigation Streets. According to Sanchez's dying declaration, Juan said the shooting was "payback" because he was arrested at the crack house, and the crack house was closed down as the result. The only way Juan had access to Sanchez's room at 2:00 a.m., absent forced entry, was with a key or with permission. According to Sanchez's dying declaration, Moya "had brought Juan over." After hearing two strange sounds in succession, like a door closing, Sanchez's neighbor heard someone running down the stairs. Because neither of the individuals Sanchez's dying declaration placed in the apartment were present after the shooting, both fled.

F. Disposition

The jury was authorized to convict Moya as a party to murder if the evidence showed that, if, with intent to promote or assist the commission of the offense, he solicited, encouraged, directed, aided, or attempted to aid the other person to commit the offense. TEX. PEN. CODE ANN.§ 7.02(a)(2) (Vernon 2003). In our sufficiency review, we are governed by the fact that the jury is the exclusive

judge of the facts proved, the credibility of the witnesses, and the weight to be given to the testimony. Earls, 707 S.W.2d at 85;TEX. CODE CRIM. PROC. ANN. art. 38.04 (Vernon 1979). The jury may believe or disbelieve all or any part of a witness's testimony, even though the witness's testimony has been contradicted. Earls, 707 S.W.2d at 85 (citing Sharp v. State, 707 S.W.2d 611, 614 (Tex. Crim. App. 1986)). Reconciliation of conflicts in the evidence is within the exclusive providence of the jury. Id. (citing Jones v. State, 944 S.W.2d 642, 647 (Tex. Crim. App. 1996)). Evidence is not rendered insufficient when conflicting evidence is introduced. Matchett, 941 S.W.2d at 936.

In this case, the jury was free to place whatever value it wished on Moya's statement. See Wesbrook v. State, 29 S.W.3d 103, 112 (Tex. 2000) (en banc). The State presented testimony throughout the trial of witnesses who recalled the key events that occurred on July 23, 2003. Moreover, the jury was free to disbelieve Moya's statement to police and testimony, to reconcile any discrepancies in the testimony before it, and to judge the credibility of the witnesses. See id. at 111. By its verdict, the jury rejected evidence of alibi.

Having reviewed all the evidence in a neutral light with appropriate deference to the jury's credibility determinations, we conclude that the evidence demonstrates that a rational trier of fact could have found beyond a reasonable doubt that Moya participated in this offense as a party. King, 29 S.W.3d at 564; Ransom, 920 S.W.2d at 288. The jury could reasonably infer that Moya aided Juan in the commission of the offense by providing him the only available access to Sanchez at 2:00 a.m. The jury could reasonably infer guilt from the evidence that Moya fled the scene. See Bigby, 892 S.W.2d at 883. That the evidence of guilt was not free of contradiction and that the credibility of witnesses may have been subject to question does not require us to conclude that the verdict was factually insupportable. See Zuliani, 97 S.W.3d at 593-94. Those circumstances merely created issues for the jury to resolve. Id.

We conclude that the evidence supporting the verdict is not too weak to support the jury's finding of Moya's participation as a party nor is the weight of the evidence contrary to the verdict strong enough that the State could not have met its burden of proof. See Zuniga, 144 S.W.3d at 484-85. We conclude the evidence was factually sufficient to support the conviction. Id.

We overrule Moya's sole issue.

III. CONCLUSION

We affirm the jury's verdict on the theory that Moya participated as a party to murder. See TEX. PEN. CODE ANN. § 7.02(a)(2) (Vernon 2003); see also Rabbani, 847 S.W.2d at 558; Kitchens, 823 S.W.2d at 259; Edwards, 106 S.W.3d at 839.

Do not publish -- TEX. R. APP. P. 47.2(b).

1. See TEX. R. APP. P. 47.1, 47.2, & 47.4.

2. A person commits murder if he intentionally or knowingly causes the death of an individual, or intends to cause serious bodily injury and commits an act clearly dangerous to human life that causes the death of an individual. TEX. PEN. CODE ANN. §19.02 (b) (Vernon 2003). The indictment alleged that, on or about July 23, 2003, Moya (1) intentionally and knowingly caused the death of Victor Michael Sanchez by shooting him with a firearm and, (2) with intent to cause serious bodily injury to Victor Michael Sanchez, committed an act clearly dangerous to human life that caused the death of Sanchez by shooting him with a firearm. When a general verdict is returned and the evidence is sufficient to support a finding of guilt under any of the paragraph allegations submitted, the verdict will be upheld. Fuller v. State, 827 S.W.2d 919, 931 (Tex. Crim. App. 1992). Thus, the State need only sufficiently prove one of the paragraph allegations to support the guilty verdict. See id.; TEX. CODE CRIM. PROC. ANN. art. 37.07 § 1(a) (Vernon Supp. 2004-05) (verdict must be general).

3. We always remain aware of the fact finder's role and unique position, a position we are unable to occupy. Johnson v. State, 23 S.W.3d 1, 9 (Tex. Crim. App. 2000) (en banc). Exercise of our authority to disagree with the fact finder's determination is appropriate only when the record clearly indicates our intervention is necessary to stop manifest injustice. Id. Otherwise, we accord due deference to the fact finder's determinations, particularly those concerning the weight and credibility of the evidence. Id. Absent exceptional circumstances, issues of witness credibility are for the jury, and we may not substitute our view of the credibility of a witness for the constitutionally guaranteed jury determination. Id.; TEX. CODE CRIM. PROC. ANN. art. 38.04. (Vernon 1979).

4. The court of criminal appeals has not specifically applied the hypothetically correct jury charge analytical construct to factual-sufficiency reviews in jury trials. See Zubia v. State, 998 S.W.2d 226, 227 n.2 (Tex. Crim. App. 1999) (per curiam) (en banc) (dismissing as improvidently granted the question of whether Malik should extend to factual grounds not submitted to the jury).

5. Cantu testified Sanchez had minimal clothing, "like he was woken up from a sleep."

6. "Mike" was the victim, Victor Michael Sanchez's nickname.

7. Officer Revis described it as a safety lock that could only be opened from inside the apartment.

8. Evidence showed that the reporting party told dispatchers that they had observed a male standing near the truck at the time they noticed the fire.

9. According to Ricky, Moya did not want to risk being charged with a DWI.

10. A statement meets the dying declaration exception to the hearsay rule when the declarant is unavailable at the time of trial and the statement is "[a] statement made by a declarant while believing that the declarant's death was imminent, concerning the cause or circumstances of what the declarant believed to be impending death." TEX. R. EVID. 804(b)(2). Sanchez died. SeeTEX. R. EVID. 804(a)(4). A declarant's belief that death was imminent "may be inferred from the circumstances of the case, such as the nature of the injury, medical opinions stated to him, or his conduct." Thomas v. State, 699 S.W.2d 845, 853 (Tex. Crim. App. 1985). The medical examiner opined that, aware of his significant blood loss,

Sanchez would be in fear of dying. He testified Sanchez lived about forty-four hours after the gunshot.