

No. 01-24-00332-CR

IN THE COURT OF APPEALS
FOR THE FIRST DISTRICT OF TEXAS

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DEBORAH M. YOUNG
Clerk of The Court

* * *

Matthew Haberland
Appellant

v.

The State of Texas
Appellee

* * *

On Appeal in Cause No. 1775726 from the
339th District Court, Harris County, Texas

APPELLANT'S BRIEF

Oral Argument Requested

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STATEMENT OF THE CASE

Appellant Matthew Haberland was indicted for murder on September 19, 2022 in Cause No. 1775726. *CR:49*.¹ Mr. Haberland pled not guilty, proceeded to trial, and was convicted by a jury and sentenced to 45 years in the Texas Department of Criminal Justice on April 30, 2024. *CR:604*. Trial counsel withdrew and Mr. Haberland timely filed his notice of appeal on April 30, 2024. *CR:611*.² An Amended Motion for New Trial was filed on May 30, 2024 and a hearing was held on July 2, 2024. *CR:648,736; RR14:1*³. The motion was denied on July 15, 2024. *CR:690, 736*.

STATEMENT REGARDING ORAL ARGUMENT

Mr. Haberland respectfully requests the opportunity to present oral argument before this Court. This is a murder case in which the defendant was denied due process when he was convicted despite the evidence being legally insufficient to prove this was not a suicide. Oral argument will assist the Court in understanding exactly how events unfolded to lead to a conviction when the evidence that any crime occurred at all is equivocal.

¹ The single volume of the Clerk's Record will be referred to as "CR" followed by the page number. (*CR:pg#*).

² Appellate counsel was appointed on May 3, 2024. *CR: 614*. Unbeknownst to appellate counsel, on May 23, 2024, trial counsel presented a Motion for New Trial and received a hearing date of May 29, 2024. *CR:643*.

³ The Reporter's Record is referred to as "RR" followed by the volume number and then the page number. (*RR#:pg#*).

ISSUES PRESENTED

POINT OF ERROR ONE

The trial court erred in denying Appellant's motion for a directed verdict.

POINT OF ERROR TWO

The evidence is legally insufficient to support a conviction for murder.

STATEMENT OF FACTS

On June 21, 2022, Ashley Wallace was on the sofa in her living room when she died from a single gunshot wound to her head, while her three children slept in nearby rooms. *CR:10; RR4: 17-18, 25; 27*. After seeing the scene and attempting to administer medical aid to Wallace, first responders believed she had committed suicide. *RR5:97; RR4:45,51*.

Mr. Haberland was on his way to work when he ran out of gas and had to walk back home. *RR4:88, 89. 90*. When he arrived, he could hear his children crying and had to kick in his front door because he had left his keys inside of his vehicle. *RR4:88-89, 101*. He had to break down the front door to enter the couple's residence, where he found Ms. Wallace's body. *RR4:101, 104, 109*.

911 call

It was Mr. Haberland's stepson, Cameron Wallace, and Mr. Haberland, who together called 911. *R5:42, 43, 56-57; RR6:187*.

The evening before Wallace's death, two of her children were put to bed in Wallace's room, a little later Wallace goes to bed and her oldest, Cameron, goes into his room to go to sleep. *RR4: 224*. The next morning, Cameron wakes up to Mr. Haberland saying "oh, my God" and he goes into the living room and sees his mom unresponsive. *RR 4: 226*. Mr. Haberland grabbed Cameron's hand and took him and the younger children outside. *RR4:229; RR5:40-41*. He put the younger children in his truck in attempt to keep them from seeing their mom. *RR5:56*. Because Cameron had his phone with him, he called 9-1-1 and Mr. Haberland took over speaking to the operator. *RR5: 43*.

It was Mr. Haberland who tried his best to console his three young children who had just lost their mother. *R4:88-89; RR5:73*. Family began arriving at the scene and after about an hour, Mr. Haberland briefly left the scene. *RR5:46, 48*. Mr. Haberland was free to leave because he was not a suspect when he left and because it was not a crime scene. *RR5:93,95-96; 98-99; RR6:203; RR7:24, 36*.

Barely holding it together

Officer Lerch interviewed Mr. Haberland at the scene and described him as "frantic, crying." *RR4:88. 96-97*. Lerch also confirmed that the damage he observed to the front door was consistent with Mr. Haberland's description of events. *RR4:104, 109*.

When Mr. Haberland left the scene, there was no evidence indicating than

Ms. Wallace's death was anything other than a suicide. *RR5: 97*. Officer Pesses admitted during cross-examination that he was not aware of what the officers may or may not have known, that Mr. Haberland did not "flee" the scene, and that he was not aware of anything tying Mr. Haberland to a homicide. *RR5:98-99*.

When Mr. Haberland took a walk for a much needed break, investigators, despite no evidence to support it, formed a theory that Wallace's death was not a suicide and that Mr. Haberland's behavior was not the aftermath of witnessing a violent and traumatic event, but rather indicative that he was responsible for her death.

Despite an extensive search for evidence to connect Mr. Haberland to Wallace's death, neither his DNA nor fingerprints were found on the weapon that killed Wallace. There were no bloody clothes or shoes belonging to Mr. Haberland, no gunshot residue on his hands, clothing, or vehicle, and no evidence of blood being washed down pipes or sinks. But, he was arrested at the scene and charged and tried for murder. *CR:10; RR4:16-17, 25-26; RR5 90-91, 145-46, 231, 232-33. 234-35; RR6 135-38; RR7:137-41*.

SUMMARY OF THE ARGUMENT

In two points of error, Matthew Haberland challenges his conviction and sentence because the jury convicted based upon legally insufficient evidence.

There was no indication that Ms. Wallace's death was anything other than suicide. Mr. Haberland, after witnessing the shocking scene and attempting to comfort and protect his children for an hour, walked away from the scene to nearby hiking trails. Based upon his walking away, law enforcement decided he was guilty of something. Based on that feeling, they decided that the suicide they were investigating must be a homicide.

ARGUMENT

POINT OF ERROR ONE

The trial court erred in denying Appellant's motion for a directed verdict.

POINT OF ERROR TWO

The evidence is legally insufficient to support a conviction for murder.

Appellant's points of error are based on the same set of facts and will be briefed together to avoid unnecessary repetition. Appellant submits this summary of evidence as a preface pertinent to all points of error and sets out more particular details when necessary for an individual point.

Apparent suicide

First responders were initially dispatched to the scene for a possible overdose or cardiac arrest. *RR4:38*. Paramedic Ervin and his partner, as well as four HFD fire engine personnel, were the first to arrive at the scene. *RR4:39*.

Homicide investigators were sent to the scene as they always are when there are scenes involving “a case of a clear suicide.” *RR4: 85, 104.*

Tampering with the scene

When Paramedic Ervin first saw Ms. Wallace, her body was folded and slumped over on a couch at an angle, facing downward. *RR4:45; 50-51.* Ervin placed a hand on Ms. Wallace’s chest and pushed her back, which changed her position. *RR4:45;51.* When Ervin lifted Ms. Wallace up, he immediately realized that she was deceased. *RR4:52.* He noticed a firearm between the armrest and the back of an adjacent couch. *RR4:56.* On cross-examination, Ervin admitted that he could not testify if anyone moved the firearm or who fired it. *RR4:62-63.*

Retired HPD patrol officer Mark Lerch, who entered the house after HFD personnel, testified that he “assume[d]” that Crime Scene Unit personnel moved the firearm. *RR4:99.*

Lead HFSC crime scene investigator Alexandra Lehosky testified that the medical examiner investigator who responded to the scene would typically move the decedent’s body. *RR5:193.* During cross-examination, she added that HFD personnel could move a decedent who was found face down and unresponsive. *RR5: 216-17.* In this case, Lehosky admitted that she did “not know [if] that’s how she’s [Ms. Wallace was] positioned when I arrived on scene.” *RR5: 217.*

Both Ms. Lehosky and the medical examiner investigator took photos of the

scene that included the firearm. *RR5: 217-18*. Ms. Lehosky acknowledged the photos entered as State's Exhibit 49 and 44 indicate that items at the scene had been moved. *RR5:221*. Although photos depicted the gun lying on top of an armrest, they also revealed that its position and that of several pillows shifted, meaning that it was impossible to determine where the pillows were originally positioned in relation to the gun. *RR5:221-22*.

A grieving husband

Retired HPD patrol officer Mason Pesses responded to the scene, but did not go into the home. *R5:72-74*. It was relayed to him that the deceased had committed suicide. *RR5:97*. Mr. Haberland and his children were sitting by a tree, and Mr. Haberland was crying and caring for the children. *RR5:73,86*. Mr. Haberland provided his name and date of birth when asked. *RR5:73*. Officer Pesses testified that he did not see any blood on Mr. Haberland's shirt or pants. *RR5:90*. Other family members began arriving on the scene. *R5:74*. As the chaos of the scene escalated, Mr. Haberland appeared to become more anxious. *RR5:89*.

Much needed respite

By the time the case went to trial, state witnesses asserted that people on the scene, specifically Mr. Haberland, were not permitted to leave the scene. However, Officer Pesses, who had been speaking with Mr. Haberland testified that he did not know whether anyone was told they were not free to leave. *RR5:75*. One

of the children estimates they were outside for about an hour while family, including aunts, uncles, and grandparents, arrived at the scene before Mr. Haberland left. *RR5:46, 48*. With trusted relatives to look after the children, Mr. Haberland told Officer Pesses that he was going to use the restroom. After a “couple of minutes,” Officer Pesses checked the area and did not see him. *RR5:76, 80-81*. He informed Officer Lerch that Mr. Haberland had left. *RR5:82*.

Haberland becomes a suspect for a crime that never occurred

Officer Pesses testified that Mr. Haberland was a witness, not a suspect. *RR5:93*. While trying to justify the sudden suspicion of Mr. Haberland, Pesses explains “that most people don’t run, jump fence and run away.” *RR5:94*. HFD personnel and law enforcement that had been in the home believed Ms. Wallace committed suicide, the family was distraught, Mr. Haberland had no visible blood on him. However, because he left, he became a suspect. *RR5: 98*. In fact, what seems to be a distraught witness getting some space from a violent scene and the overwhelming chaos of first responders, family, and onlookers suddenly becomes characterized as “fled the scene.” *RR5: 98-99*.

HPD Kingwood Bike Patrol Officer Rogolio Ramirez testified that an officer at the scene put out an alert that Mr. Haberland had left the scene and needed to be brought back. *RR5: 37, 102*. Ramirez and Sergeant Erik Schmidt went to the home to get a description of the witness they would be looking for and there was never

any discussions that the decedent at the scene had been a victim of a crime. *RR5:105-106;117.*

Ramirez and Sgt. Schmidt saw Mr. Haberland walking on the trails toward the trees and when they asked him for his name, he replied “King James”, before telling them “Matthew Haberland.” *RR5:131.* After Sgt. Schmidt patted Mr. Haberland down, Mr. Haberland walked out of the woods toward the officers’ truck without any resistance or objection. *RR5:132.* While Mr. Haberland’s response was weird, it is certainly not enough to sustain a murder conviction.

HCIFS medical examiner Dr. Jennifer Ross: suicide is possible

HCIFS medical examiner Dr. Jennifer Ross performed Ms. Wallace’s autopsy on June 22, 2022. *RR6: 6, 12-13.* Dried blood spatter was found on Ms. Wallace’s right hand and anterior left thigh. *RR6: 22.* Gunshot residue was also found on Ms. Wallace’s hand. *RR6: 56. RR6:41, 43.*

On direct examination, Ross stated that she did not describe the wound as having been caused by the muzzle of a gun being pressed against Ms. Wallace’s skin. *RR6: 27.* The presence of punctuate abrasions, superficial lacerations, and gunpowder stippling indicated to Ross that the fatal gun shot was not a contact wound. *R6: 27-29.*

Ross concluded that Ms. Wallace’s manner of death was a homicide because of “the lack of evidence of close range fired.” *RR6:41, 43.*

On cross-examination, Ross admitted that she had not read any literature pertaining to the specific firearm at issue in this case and that she could not testify as to how gunpowder would project out of its barrel. *RR6:52*. She also could not testify about how stippling would occur or its proximity to Ms. Wallace's body when the gun was fired. *RR6: 52-53*.

Autopsy examination did not measure up

Ross admitted that the fact that all the pellets were embedded inside of Ms. Wallace's skull and the plastic wadding was located next to the pellets suggested that the gun was fired at close range. *RR6:55*. Inexplicably, although Ross measured the distance from Ms. Wallace's right fingertip to her shoulder, she did *not* measure this same distance from Ms. Wallace's left hand. *RR6:56-58*. Ross also admitted that while it was not outside the realm of possibility for someone to use their right hand to hold a gun barrel and their left hand to shoot themselves, she did not take this possibility into account. *RR6:60*. Finally, Ross acknowledged that gunshot residue was found on Ms. Wallace's left hand, but not on her bloody right hand, and that she did not measure Ms. Wallace's left hand to determine whether it was capable of firing the firearm. *RR6:65*.

Ultimately, Ross testified that it is possible Ms. Wallace shot herself. *RR6:79-80*.

Appropriately, after the State's presentation of evidence, defense counsel

moved for a directed verdict because there was not a scintilla of evidence that Mr. Haberland committed murder and there was no “forensic evidence that points to Mr. Haberland as having been associated with the death of Ms. Wallace.” *RR7:145*. Additionally, there was not evidence that a murder occurred.

Directed verdict was proper

A complaint about the denial of an instructed verdict is reviewed as an attack on the sufficiency of the evidence. *Cook v. State*, 858 S.W.2d 467, 470 (Tex. Crim. App. 1993). When the state rested, there wasn’t enough evidence to convict Mr. Haberland. The only evidence that this was not suicide was the medical examiner’s testimony and that . *RR6:79*. The trial judge erred in denying Appellant’s motion for a directed verdict.

Mere speculation

“The Due Process Clause protects the accused against conviction except upon proof beyond a reasonable doubt of every fact necessary to constitute the crime with which he is charged.” *In re Winship*, 397 U.S. 358, 364, (1970); *Miles v. State*, 357 S.W.3d 629, 631 (Tex. Crim. App. 2011). This standard is the same in both direct and circumstantial evidence cases. *Jackson v. Virginia*, 443 U.S. 307, 318-319 (1979).

Circumstantial evidence which is “more speculative than inferential as to appellant’s guilt” is not sufficient to support a conviction. *Winfrey v. State*, 393

S.W.3d 763, 771-72 (Tex. Crim. App. 2013). A jury may draw inferences – even multiple inferences – from both direct and circumstantial evidence, as long as each inference is both reasonable and supported by the evidence. *Hooper v. State*, 214 S.W.3d 9, 15 (Tex. Crim. App. 2007).

A jury may not “come to conclusions based on mere speculation or factually unsupported inferences or presumptions.” *Id.* The distinction between inferences and speculation is crucial:

[A]n inference is a conclusion reached by considering other facts and deducing a logical consequence from them. Speculation is mere theorizing and guessing about the possible meaning of facts and evidence presented. A conclusion reached by speculation may not be completely unreasonable, but it is not sufficiently based on facts or evidence to support a conclusion beyond a reasonable doubt.

Id. at 15-16. Even if the evidence leads to a “strong suspicion of guilt,” that “does not equate with legally sufficient evidence of guilt.” *Winfrey*, 393 S.W.3d at 771-773.

In this case, Mr. Haberland leaving the scene, when he had not been told he needed to stay, was the beginning of law enforcement trying to make a case against Mr. Haberland for murder, when everyone believed the death was a suicide. When discussing Mr. Haberland’s departure, the prosecutor explained to the trial court:

State is not alleging it's any sort of offense to leave the scene. We are alleging that it goes to reasonable suspicion to detain because it is behavior that is unusual and lends itself towards, I guess, it's unusual

behavior that goes to the offense or criminal activity maybe or is about to be alleged.

RR5:118.

Evidence is legally insufficient to support a conviction if “the record contains either no evidence of an essential element, merely a modicum of evidence of one element, or if it conclusively establishes a reasonable doubt. *Britain v. State*, 412 S.W.3d 518, 520 (Tex. Crim. App. 2013); *Ervin v. State*, 331 S.W.3d 49, 55 (Tex. App.—Houston [1st Dist.] 2010, pet. ref’d).

There is not a “modicum” of evidence, supporting the fact finder’s guilty verdict. *Garcia v. State*, 367 S.W.3d 683, 687 (Tex. Crim. App. 2012).

This Court must consider all the evidence, or rather the lack of it, that was presented to the jury because “a verdict or conclusion only weakly supported by the record is more likely to have been affected by errors than one with overwhelming record support.” *Frangias v. State*, 413 S.W.3d 212, 218 (Tex. App.—Houston [14th Dist.] 2013, no pet.)(quoting *Strickland*, 486 U.S. at 696).

A witness’ lawful and harmless, but arguably bizarre, behavior in the aftermath of finding a loved one shot to death does not even meet the standard of a “modicum” of evidence. *See Britain v. State*, 412 S.W.3d 518, 520 (Tex. Crim. App. 2013). The jury was left “come to conclusions based on mere speculation or factually unsupported inferences or presumptions.” *Hooper* at 15.

The evidence was legally insufficient and this trial was not “one that resulted

in an outcome worthy of confidence.” *Kyles v. Whitley*, 514 U.S. 419, 430 (1995).

PRAYER

WHEREFORE, PREMISES CONSIDERED, Appellant Matthew Haberland respectfully requests that this Court reverse the judgment of conviction and enter a judgment of acquittal.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

This is to certify that the foregoing instrument is in compliance with Rule 9.4 of the Texas Rules of Appellate Procedure. It was prepared using Times New Roman 14-point font, with footnotes in Times New Roman 12-point font. In its entirety, it contains 3,606 words.

Amy Martin
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CERTIFICATE OF SERVICE

This is to certify that on April 29, 2025, a true and correct copy of the foregoing document, as required by Texas Rule of Appellate Procedure 9.5, was served upon the following counsel of record for the government using the electronic filing manager.

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