

## Juvenile Law Case Summaries

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### ***Evidence was sufficient to show respondent aided murder by providing weapons and disposing of body [In re K.C.A.] (02-1-21).***

On February 1, 2002, the Dallas Court of Appeals upheld an adjudication and determinate sentence for murder on evidence that while the respondent did not personally commit the offense he did provide weapons with which it was committed and did assist in disposing of the body.

02-1-21. In the Interest of K.C.A., UNPUBLISHED, No. 05-98-01217-CV, 2002 WL 127368, 2002 Tex.App.Lexis \_\_\_\_ (Tex.App.-Dallas 2/1/02) [Texas Juvenile Law (5th Edition 2000)].

Facts: K.C.A. appeals from an adjudication of juvenile delinquency for the offense of murder, contending the evidence was not legally sufficient to support the jury's finding of delinquency. Concluding the evidence was sufficient, we affirm the judgment.

On October 25, 1997, Rachel Banks, Shawn Tutton, and Cameron Miller, also known as "Murda," attempted to purchase marijuana from Josh Daughtry. Daughtry took their \$500 and entered an apartment complex, allegedly to obtain the marijuana. Lindsey Williams, Daughtry's girlfriend, remained in the parking lot of the apartment complex. When Daughtry did not return with either the marijuana or the money, Miller, Tutton, and Williams went into the complex to search for Daughtry.

The search for Daughtry was unsuccessful, and Banks, Tutton, Miller, and Williams drove to Miller's residence to meet John Harris. Miller, Tutton, and Harris, in Harris's car, and Banks and Williams, in Banks's car, then drove to K.C.A.'s house. K.C.A.'s father kept approximately thirty-five guns and a large quantity of ammunition in the house. K.C.A. had access to the weapons.

Miller and Tutton were obviously upset and loudly discussed the theft of their money. They then requested K.C.A. provide them with guns to use "to handle a problem." K.C.A., in a written statement, claimed Miller told K.C.A. Miller was not going to shoot anyone. K.C.A. placed approximately ten handguns and shotguns on a bed. Miller and Tutton selected two loaded .22 caliber pistols and left, indicating they were walking to Daughtry's house. After learning Daughtry was not home, Miller and Tutton returned to K.C.A.'s residence and requested a room in which they could talk to Williams about where they could locate Daughtry. Although there was conflicting evidence regarding whether K.C.A. acquiesced in the request or Miller and Tutton used the room over K.C.A.'s objection, Miller, Tutton, and Harris did use a downstairs bedroom in K.C.A.'s residence to question Williams. K.C.A. claims he removed the bullets from the gun he provided to Tutton prior to the questioning, but did not unload the gun in Miller's possession. Miller was wearing gloves prior to the questioning of Williams.

K.C.A., Banks, and Carrigan Miller (Carrigan), Miller's brother who was spending the night at K.C.A.'s house, went to the upstairs game room. K.C.A. had both a rifle and a handgun in the game room. At one point, Tutton and Harris came upstairs, and K.C.A. gave Tutton the handgun. K.C.A. claims this handgun was not loaded. Banks heard a "lot of yelling" coming from downstairs. A telephone was located in the game room, but K.C.A. did not use the telephone to seek help.

K.C.A., Banks, and Carrigan subsequently heard a gun shot from downstairs. They went downstairs to investigate and were informed by Tutton that Williams had been shot. At this point, Williams was still alive. Williams was ultimately shot ten times with the two .22 caliber handguns provided by K.C.A. and died at K.C.A.'s residence. K.C.A. did not shoot Williams.

Banks and Tutton left K.C.A.'s residence. Miller and Harris requested K.C.A. provide sheets and garbage bags to wrap Williams's body. K.C.A. provided the sheets but did not have garbage bags. Miller and Harris left to purchase garbage bags. K.C.A. did not call the police or otherwise seek assistance while Miller and Harris were gone. Miller and Harris returned with the garbage bags and began wrapping Williams's body. At this point, K.C.A.'s father returned home. K.C.A. did not seek assistance from his father.

Miller, Harris, and Carrigan placed Williams's body into the trunk of Harris's car, and, giving K.C.A. instructions to "clean up what was left of the mess," left to dispose of Williams's body. K.C.A. attempted to clean up Williams's blood from the bedroom and returned the guns to their storage place in K.C.A.'s father's closet. No fingerprints were found on either gun. K.C.A. did not disclose the murder until after his arrest five weeks later.

K.C.A. claimed in his written statement that he was frightened after Williams was shot and was afraid Miller would hurt him if he said anything about the murder. Carrigan gave contradictory testimony that Miller and Tutton both "demanded" and "requested" K.C.A.'s assistance. However, both Banks and Carrigan testified no one threatened K.C.A. in order to gain his assistance. Further, when Carrigan refused Miller's and Tutton's requests that he help place Williams's body into trash bags and find a map, neither Miller nor Tutton forced him to perform either task.

The jury found K.C.A. delinquent based on the offense of murder, and the court imposed a determinate sentence of twenty years. K.C.A. then brought this appeal.

Held: Affirmed.

Opinion Text: Standard of Review

To determine whether the evidence is legally sufficient in juvenile cases, the reviewing court applies the criminal standard of review. In *re J.S.*, 35 S.W.3d 287, 292 (Tex.App.-Fort Worth 2001, no pet.); *C.D.F. v. State*, 852 S.W.2d 281, 284 (Tex.App.-Dallas 1993, no writ). We, therefore, view the evidence in the light most favorable to the verdict to determine whether, based on the evidence and any reasonable inferences therefrom, any rational trier of fact could have found the essential elements of the offense beyond a reasonable doubt. *Jackson v. Virginia*, 443 U.S. 307, 319 (1979); *Young v. State*, 14 S.W.3d 748, 753 (Tex.Crim.App.2000).

Discussion

K.C.A. did not shoot Williams but was found delinquent for the offense of murder by virtue of being a party under section 7.02(a)(2) of the Texas Penal Code. K.C.A. can be guilty of murder as a party under section 7.02(a)(2) if he acted with the intent to promote or assist in the commission of the offense by soliciting, encouraging, directing, aiding, or attempting to aid the other person in its commission. Tex. Pen.Code Ann. § 7.02(a)(2) (Vernon 1994); *McIntosh v. State*, 52 S.W.3d 196, 200 (Tex.Crim.App.2001); *Ransom v. State*, 920 S.W.2d 288, 302-03 (Tex.Crim.App.1994) (opin. on reh'g). The evidence must show conduct by the primary actor constituting the offense plus an act or acts by K.C.A. done with the intent to promote or assist such conduct. *Lawton v. State*, 913 S.W.2d 542, 555 (Tex.Crim.App.1995). K.C.A. contends there was no evidence of his intent to promote or assist in the murder of Williams.

To prove a party's intent to promote or assist in the commission of the offense, the evidence must reflect that at the time of the offense the parties acted together, each doing some part to execute the common design. See *Burdine v. State*, 719 S.W.2d 309, 315 (Tex.Crim.App.1986). A common design can rarely be shown by direct evidence and may instead be shown by the actions of the parties before, during, and after the offense. *Id.* Mere presence at the offense is insufficient to convict a defendant as a party; however, evidence that the defendant was present and encouraged the commission of the offense by act, words, or other agreement may be sufficient. *King v. State*, 29 S.W.3d 556, 564 (Tex.Crim.App.2000); *Ransom*, 920 S.W.2d at 302; *Holiday v. State*, 14 S.W.3d 784, 789 (Tex.App.-Houston [1st Dist.] 2000, pet. ref'd). The jury may infer an intent to kill from the use of a deadly weapon. *Jones v. State*, 944 S.W.2d 642, 647 (Tex.Crim.App.1996).

There is conflicting evidence about K.C.A.'s participation in Williams's murder. The jury is the sole judge of the credibility of the witnesses and may accept or reject any or all of the evidence on either side. *Whitaker v. State*, 977 S.W.2d 595, 598 (Tex.Crim.App.1998); *Patterson v. State*, 950 S.W.2d 196, 201 (Tex.App.-Dallas 1997, pet. ref'd). We leave resolution of conflicts and contradictions in the evidence to the jury as the finder of fact. *Whitaker*, 977 S.W.2d at 598; *In re D.T.C.*, 30 S.W.3d 43, 50 (Tex.App.-Houston [14th Dist.] 2000, no pet.). As a reviewing court, we only ensure the jury reached a rational decision. *In re D.T.C.*, 30 S.W.3d at 50.

A rational fact finder could conclude K.C.A. solicited, encouraged, directed, aided, or attempted to aid Miller or Tutton in the murder of Williams. K.C.A. provided loaded weapons to Miller, nicknamed "Murda," and Tutton, who were both visibly upset, so that they could "solve a problem." There was also evidence that K.C.A. allowed Miller, who was wearing gloves, and Tutton to question Williams in a room at K.C.A.'s house, knowing that they were upset over the loss of their money and in possession of at least one loaded gun. [FN3] Although he had access to a telephone, K.C.A. did not attempt to contact the police during this questioning and, in fact, provided Tutton with an additional handgun during the questioning.

FN3. The fact Williams was shot with both guns casts doubts on K.C.A.'s claim that he unloaded the gun he provided to Tutton.

After Williams was initially shot but not killed, K.C.A. did nothing to stop Miller or Tutton from shooting Williams repeatedly. K.C.A. provided Miller and Harris with sheets to wrap Williams's body. K.C.A. did not seek assistance after Miller and Harris left the residence to purchase garbage bags to wrap Williams's body. K.C.A. did not seek assistance from his father while Miller and Harris were in the process of wrapping Williams's body in the sheets and trash bags. K.C.A. did not seek assistance after Miller, Harris, and Carrigan left K.C.A.'s residence with Williams's body. Instead, K.C.A. attempted to clean Williams's blood from the bedroom and returned the guns to their proper location. The jury could reasonably infer, from the absence of any fingerprints on the two guns, that K.C.A. wiped the guns to remove any evidence. Finally, K.C.A. did not disclose Williams's murder until after K.C.A.'s arrest more than five weeks later. Given K.C.A.'s presence at the scene of the offense and the events that occurred before, during, and after the offense, a rational fact finder could conclude K.C.A. was acting with the other participants toward the execution of a common goal.

Viewing the record in favor of the jury's verdict, we conclude there was legally sufficient evidence to find appellant delinquent by being a party to Williams's murder under penal code section 7.02(a)(2). We overrule appellant's sole point of error.

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