In The

Court of Appeals

Ninth District of Texas at Beaumont

NO. 09-97-021 CR

DESIREE SHAW, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the 159th District Court
Angelina County, Texas
Trial Cause No. 19,058

OPINION

A jury convicted Desiree Shaw of murdering her husband and assessed as punishment a thirty-two year term of imprisonment in the Texas Department of Criminal Justice, Institutional Division. She raises two points of error on appeal.

Point of error one contends the appellant is entitled to a new trial because an exhibit is missing from the appellate record[1]. Shaw claims Defense Exhibit 4 is missing from the reporter's record. During cross-examination, defense counsel had investigator Charlie Harris identify "Defendant's Exhibit 4," which was admitted into evidence. Immediately thereafter, defense counsel stated "Your Honor, I want to make sure, there is two numbers on here," then said "Judge, I'm sorry, it's defendant's three. What is that and when was it taken?" The witness testified the exhibit was a photograph of the victim in the bed. Defense counsel offered the exhibit as Defendant's Exhibit 3, "if I haven't already done so," to which the court replied, "It's already admitted, Defendant's Exhibit 3." Obviously, Defendant's Exhibit No. 3 and Defendant's Exhibit No. 4 are the same exhibit, and the exhibit appears in the record. We conclude Shaw has not been deprived of a complete record on appeal. Point of error one is overruled.

Point of error two contends the evidence is factually insufficient to support the jury's verdict. Shaw cites the standard of review set forth in *Clewis v. State*, 922 S.W.2d 126 (Tex. Crim. App. 1996), but supplies as argument only the following statement: "This

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[1] The case Shaw relies upon, *Melendez v. State*, 936 S.W.2d 287 (Tex. Crim. App. 1996), was recently overruled by the Court of Criminal Appeals in its decision in *Gomez v. State*, No. 1244-95, 1998 WL 40233 (Tex. Crim. App. February 4, 1998). That same case applied Rule 50(e) of the rules appellate procedure in effect prior to September 1, 1997, rather than Rule 34.6(f) of the Texas Rules of Appellate Procedure.

is not a case where the appellant raised self-defense, or an affirmative defenses (sic)." Her statement of the facts of the case provides the appellant "either shot her husband in the head while he slept OR the husband commited suicide," without providing a single reference to the record. The State directs us to evidence Shaw does not discuss in her brief. Shaw claimed to have been in the shower when the shooting occurred, but the showers were dry. The gun was wrapped in a piece of underwear, but there was no gunpowder residue as would be present if the cloth had been there when the weapon was fired. The empty cartridge was still in the weapon, which would be consistent with someone having muzzled the gun. The victim died of a contact gunshot wound to the upper neck, a wound not typically found in accidents. The bullet caused severe damage to the upper spinal cord, paralyzing the victim so that he could not have moved his hands. Atomic absorption tests conducted on the decedent's hands were negative, as were those run on Shaw's hand. An expert on crime scenes testified the scene had been altered by wrapping the gun and placing it next to the deceased, by his surmise probably to make a homicide appear to be suicide or accident. Finally, Shaw told the officers she and her husband were on good terms, but Mr. Shaw had recently expressed to other people his intention to obtain a divorce from the appellant.

Shaw does not direct us to the evidence in her favor, but we note in particular the negative findings on atomic absorption tests conducted on her hand, the circumstantial nature of the evidence in this case, and the circuitous reasoning employed by the crime scene expert. The evidence preponderating against a finding of her guilt does not so overwhelm the evidence supporting a finding of guilt as to compel us to conclude the jury's verdict was clearly wrong and unjust. Point of error two is overruled. We affirm the judgment and sentence of the trial court.

AFFIRMED.

PER CURIAM

Submitted on March 3, 1998
Opinion Delivered March 11, 1998
Do Not Publish

Before Walker, C.J., Burgess and Stover, JJ.