Opinion issued February 23, 2017

In The

Court of Appeals

For The

First District of Texas

NO. 01-15-01088-CR

CHARLES LEON SMITH, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the 263rd District Court
Harris County, Texas
Trial Court Case No. 1275390

MEMORANDUM OPINION

A jury convicted appellant, Charles Leon Smith, of the offense of murder[1] and assessed his punishment at confinement for life. In three issues, appellant argues that the trial court erred in denying his motion to suppress his custodial

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1 *See* TEX. PENAL CODE ANN. § 19.02 (West 2011).

statement made to police and allowing it to be introduced at trial and that the evidence was insufficient to support his conviction.

We affirm.

Background

In 1984, appellant was in a dating relationship with the complainant, Pamela Clarence, and, at the time of Clarence's murder, they had a one-month-old baby girl together. Appellant had also been involved romantically with another woman with whom he had had a son at around the same time, and Clarence was aware of that relationship.

On August 2, 1984, Clarence's niece stopped by for a visit and found the door ajar and Clarence unresponsive on the floor. The niece ran to find Clarence's sister, who arrived and asked a neighbor to call 911. Clarence's sister tried to revive her and also found the baby's body in the bed under the covers.

The police arrived to investigate the murder and found Clarence with an electrical cord wrapped around her neck. Investigators observed that there was no sign of forced entry. It appeared that there had been a struggle in the bedroom area of the home, where Clarence's and her baby's bodies were found, but the home was otherwise orderly. The police also discovered a letter, written by Clarence and addressed to appellant, breaking off their romantic relationship. Autopsies revealed that Clarence's death was caused by strangulation, and the baby's death was

caused by suffocation. Police interviewed appellant at the time, but he told them he had been at a bachelor party the afternoon and evening of the day Clarence was murdered. The police also investigated several other people in connection with Clarence's death but were unable to resolve the case at that time.

In 2010, Sergeant C. Parks, with the Houston Police Department, was assigned the case. She obtained DNA testing of some physical evidence collected from the scene of Clarence's murder and investigated other leads that did not reveal any helpful information. In reviewing the file, Sergeant Parks observed that there was no sign of forced entry at Clarence's home and relatively little sign of disarray at the murder scene. This lead Parks to believe that the murderer was someone Clarence knew. Sergeant Parks decided to speak with appellant once again and contacted him on August 17, 2010. Appellant agreed to come to the police station to discuss the case. When he arrived for his appointment on August 20, 2010, appellant submitted to a polygraph examination, and Parks subsequently enlisted the help of Sergeant E. Cisneros in interviewing appellant.

Sergeant Parks testified that she observed Sergeant Cisneros interview appellant from outside the room, "looking through the—where the camera is." She stated that appellant was not under arrest at that time and that Sergeant Cisneros did not threaten or coerce appellant in any way. During this interview, appellant told Cisneros that he would come back and confess to the murder after he had a

chance to settle his personal affairs. Appellant was allowed to leave after this interview.

Parks and Cisneros then reviewed the additional information that appellant provided on August 20, 2010, and obtained an arrest warrant. On August 23, 2010, appellant was arrested pursuant to the warrant and questioned again. At this time, Sergeant Cisneros—with Sergeant Parks observing on closed-circuit television—took appellant's statement. In giving his statement, appellant confessed to killing Clarence and their baby girl.

At trial, appellant moved to suppress the statement he had given to Sergeant Cisneros on August 23, 2010, in which he confessed to killing Clarence and the baby. In his written motion, appellant argued that his statement was involuntary and coerced by police conduct. He also argued in the motion that his statement was taken in violation of his Fifth Amendment rights because it was taken after "repeated attempts . . . to terminate the questioning." And he argued that the statement was taken in violation of his Sixth Amendment right to counsel because he requested an attorney and was denied access to one. At the suppression hearing, appellant argued that his statement was involuntary and coerced by the police.

At the suppression hearing, outside the presence of the jury, Sergeant Cisneros testified that he first questioned appellant on August 20, 2010, when appellant arrived for the appointment he had made with Sergeant Parks to answer

some questions about Clarence's murder. Sergeant Cisneros met appellant after his polygraph examination and asked if appellant was willing to discuss the case further. Appellant's counsel interjected at this point that he did not believe the jury should be informed that appellant had taken a polygraph examination, and the trial court agreed.

Cisneros then testified at the suppression hearing that appellant was not under arrest on August 20, 2010—he was not handcuffed or "in custody," and he was free to leave at any time. During this interview, which was not recorded, Sergeant Cisneros wanted to "develop rapport" with appellant by having a cup of coffee, introducing himself to appellant, and speaking generally "about family life" and other topics. Sergeant Cisneros eventually began to question appellant about details from the day of Clarence's murder.

Cisneros told appellant that he "had information that [appellant] was directly linked to this case." Sergeant Cisneros acknowledged at the hearing that he did not have direct information but that this statement "was a tactic that [he used] to lead [appellant] to believe that [he] did, in fact, have information that did link him to the case." At that point, appellant informed Cisneros that he wanted to leave and explained to Cisneros that "when he came back that he would confess to what actually had occurred on that date." Cisneros asked him, "[W]hat are you going to come back and confess to? Are you going to come back and confess to what you

did to [Clarence] and [the baby]?" Appellant answered with a nod of his head. Sergeant Cisneros then allowed appellant to leave.

Sergeant Cisneros helped Sergeant Parks obtain a warrant for appellant's arrest, and appellant was arrested by HPD officers on August 23, 2010, and brought to Sergeant Cisneros for further questioning. Sergeant Cisneros testified that during their August 23, 2010 interview appellant was in custody, as he had been arrested, handcuffed, and transported to HPD's homicide office. Cisneros again engaged in a rapport-building process by offering appellant a cup of coffee and having a general discussion with him.

Sergeant Cisneros testified that he "advised [appellant] that he was, in fact, arrested at this time and was not free to leave as he was initially." Cisneros advised appellant of his *Miranda* warnings and conducted an unrecorded interview, during which appellant admitted to Cisneros that "he was present when this incident had happened at [Clarence's] residence." After appellant made this statement, Sergeant Cisneros took a video-recorded statement from appellant.

In the recorded statement, Cisneros informed appellant again of his *Miranda* rights. Cisneros testified that appellant appeared to understand his rights in both instances and that appellant did not invoke any of his *Miranda* rights during the off-camera interview or during the recorded interview. Cisneros further testified that he did not threaten appellant, make any promises to him, withhold any

necessity from him, or otherwise entice or coerce appellant's confession. Sergeant Cisneros also stated that appellant did not appear intoxicated or under the influence of any substance that would have altered his state of mind. Cisneros denied having encouraged appellant to confess or making any representations about possible charges that could be filed against appellant or possible sentences that could be imposed.

The State also introduced appellant's recorded statement at the suppression hearing. At the beginning of the recording, Sergeant Cisneros identified himself again to appellant and informed appellant that he was going to read again the statutory warnings he had provided to appellant previously. Cisneros read appellant's warnings, and appellant acknowledged that he understood the warnings and voluntarily waived them. During his recorded statement, appellant stated that he and Clarence had been engaged and that they had a baby girl together. However, Clarence knew he also had had a baby with another woman shortly before their daughter was born. Appellant told Cisneros that on the day of the murder he went over to spend some time with Clarence, and she told him she did not think their relationship was going to work out because of his romantic involvement with the other woman and because she had also started a relationship with another man. Appellant said that Clarence would not tell him who the other man was, and he felt hurt and dazed. Clarence asked him to leave, and he tried to

hug her, but she pushed him away. He said that at that point, something took over his body and he lost control and, before he knew it, "they were dead." Sergeant Cisneros asked appellant if he remembered how that happened, and appellant answered that he did not remember and that he did not admit doing the crime itself. He reiterated that something had just come over him and he had no control over himself.

He further stated that after he realized Clarence and the baby were dead he left the house in a daze and returned home. He stated that he later attended a bachelor party with a friend. Appellant also stated that he was sorry for what happened and that, if he had it to do over again, he would have just left Clarence's house after she broke up with him. Sergeant Cisneros asked appellant if there was anything else he needed to get off his chest, and appellant said that anyone listening to the statement could find a way to forgive him for the "incidents." The recorded interview ended with Cisneros asking appellant whether he had been threatened in any way, and appellant responded that he had not been threatened and that Cisneros had been doing his job.

Appellant also testified at the suppression hearing. He stated he was educated through the tenth grade and had not received a high school diploma. Appellant testified that he voluntarily arrived for his appointment on August 20, 2010, and that he did not contact a lawyer at that time "because [he] didn't have

anything to hide." He testified that he willingly took a polygraph test and that Sergeants Parks and Cisneros then met him and asked him to talk to them.

Appellant testified that he had a thirteen year old daughter. He stated that when Sergeant Cisneros interviewed him on August 23, 2010, Cisneros told him that once a jury saw the pictures it would convict him. Appellant testified that Cisneros told him, "It's best that you confess to it. That way, if you confess it, you'll do a little time and you'll go home. But if you don't confess to it, you will get life and never see the world." Appellant stated that when Cisneros told him this his "mind was only focused on my daughter. And I opened my mouth and said some words that I shouldn't have said. And I did say those words." He testified that Sergeant Cisneros was nice to him, but he got scared "because I've never been through anything that I'm going through today, that I went through then." Appellant testified that he did not kill Clarence, but he wanted to cooperate with the police and wanted the interview to end, so he "said some words I shouldn't have said." Appellant testified that he could not remember whether Sergeant Cisneros had read him his *Miranda* rights prior to recording the statement on August 23, 2010. Neither could appellant remember whether he was permitted to make any phone calls prior to giving his statement. He did not testify or otherwise provide any evidence that he had attempted to invoke his right to terminate the interview or his right to have an attorney present during his questioning.

The State argued at the suppression hearing that the evidence showed that both of appellant's statements—the one on August 20, 2010, and the one on August 23, 2010—were completely voluntary. Appellant was not in custody when he gave the August 20, 2010 statement. He was properly warned on August 23, 2010, after his arrest and prior to any questioning, and the videotaped confession showed that he was properly warned prior to giving that statement. The State argued that there was no evidence of threats or coercion.

Appellant argued that the police were not trying to solve a crime, they were acting with the sole intent to get appellant to confess. He stated that it was "inconceivable" that "the officers talked to him and did not show him any pictures, did not make him any promises, did not threaten him in any way to get a statement from him." Appellant argued that his confession was not voluntary.

The trial court denied appellant's motion to suppress. It signed findings of fact stating that appellant "voluntarily participated" in the August 20, 2010 interview. The trial court also found that, following his arrest on August 23, 2010, appellant was placed in an interview room, Cisneros read appellant his statutory warnings, and Cisneros brought appellant coffee and started to discuss the case with him. The trial court further found that when Cisneros started recording the interview he again read appellant's statutory warnings, and appellant demonstrated that he understood the warnings and affirmatively waived his rights. The trial court

found that appellant "did not, at any time, ask to terminate any of his conversations with the investigating officers or inquire about contacting or obtaining an attorney." The trial court also found that appellant was not threatened or coerced, and it found that Sergeant Cisneros was a credible witness. The trial court concluded that the statement was obtained in full compliance with Code of Criminal Procedure article 38.22 and that appellant knowingly and voluntarily waived his rights "in the absence of any threats, promises, coercion or other improper inducement on the part of any law enforcement officers."

The trial proceeded, and the State presented testimony from Detective S. Ward, the officer who had originally investigated the murder scene in 1984. Detective Ward found Clarence in the bedroom with an electrical cord around her neck. He testified that there were no signs of forced entry and that there was relatively little sign of a struggle, except in the bedroom where the bodies were found. Detective Ward also discovered a letter written by Clarence addressed to appellant, in which Clarence broke off her romantic relationship with appellant. Detective Ward testified that he had interviewed appellant, who stated that he had attended a bachelor party that afternoon. Detective Ward also investigated other individuals in connection with Clarence's murder, but he was unable to resolve the case at that time.

Clarence's niece and sister testified about discovering her body. Clarence's sister also testified that Clarence and appellant had been having difficulty in their relationship and that she believed they were splitting up.

Sergeants Park and Cisneros testified regarding their investigation of the case and their subsequent contact with appellant. The State admitted appellant's August 23, 2010 video-recorded statement into evidence, in which appellant confessed that he visited Clarence the day she was murdered, that she broke up with him, he lost control, and the next thing he knew, Clarence and the baby were dead. The trial court admitted the video over appellant's renewed objection that the statement was involuntary.

The State also presented testimony from multiple expert witnesses regarding the physical evidence and autopsy results. There was no DNA or other physical evidence linking appellant to the murder. The medical examiner testified that Clarence died of asphyxia due to ligature strangulation. He further stated that he could not determine the exact time of Clarence's death.

Appellant testified on his own behalf. He testified about his educational and work history. He also described his relationship with Clarence, explaining that they had dated for a couple of years. He also testified that he had maintained dating relationships with both Clarence and another woman at approximately the same time and that Clarence was aware of his other relationship. He testified that he had

an appointment the morning that Clarence died and that he went to a bachelor party that afternoon and evening. When he returned from the party, his mother told him Clarence had died and he became very upset. Appellant stated that he presented himself to police for questioning, and the police let him go. Appellant also testified about the subsequent investigation by Sergeants Parks and Cisneros.

On direct examination, appellant testified that he did not see Clarence the day she died, that he did not kill her or the baby, and that he did not know who killed them. On cross-examination, appellant testified regarding his statement. He agreed that the things he described actually happened—he went to see Clarence the day before she died, she broke up with him, he tried to hug her, and she pushed him away. When asked about his statement in the video-recording that something came over him and he had no control, he stated, "But I did not kill her." He stated that he was "hurt" because he loved Clarence. He testified that after Clarence pushed him away, he went back to his house.

Clifford Dohunt testified that he had known appellant for at least forty-five years and that he had attended a bachelor party with appellant on the day Clarence was murdered. When the two returned to appellant's home, appellant's family informed them that Clarence had been murdered and that police were looking for the two men. Dohunt testified that he knew appellant and Clarence had been dating, and he was not aware of any problems with their relationship. Appellant's

niece, Trasel Holmes, his sister, Emma Jean Smith, and his mother, Lois Smith, testified that they were aware of appellant's relationship with Clarence, and they did not think the couple were having any problems. They all stated that appellant became very upset when he was told Clarence had died.

The jury found appellant guilty of Clarence's murder and assessed his punishment at imprisonment for life. This appeal followed.

Suppression of Appellant's Statement

In his first and second issues, appellant argues that the trial court erred in denying his motion to suppress and allowing his August 23, 2010 statement to be presented to the jury. He argues on appeal that his statement was involuntary and that it was obtained in violation of his Fifth and Sixth Amendment rights.

A. Standard of Review

We review a trial court's ruling on a motion to suppress for an abuse of discretion. *State v. Story*, 445 S.W.3d 729, 732 (Tex. Crim. App. 2014). Thus, a trial court's decision on the admissibility of the evidence will not be reversed if it is within the zone of reasonable disagreement. *Tillman v. State*, 354 S.W.3d 425, 435 (Tex. Crim. App. 2011). We will uphold a trial court's ruling if it is reasonably supported by the record and is correct under any theory of law applicable to the case. *Willover v. State*, 70 S.W.3d 841, 845 (Tex. Crim. App. 2002).

The trial court is the sole trier of fact and judge of the credibility of the witnesses and the evidence presented at the hearing on the motion. *Wiede v. State*, 214 S.W.3d 17, 24–25 (Tex. Crim. App. 2007). We give almost total deference to the trial court's determination of historical facts and to its application of the law to fact questions that turn upon credibility and demeanor. *Alford v. State*, 358 S.W.3d 647, 652 (Tex. Crim. App. 2012). This deferential standard similarly applies when the trial court's determinations are based on a recording admitted into evidence at a suppression hearing. *See Montanez v. State*, 195 S.W.3d 101, 108–09 (Tex. Crim. App. 2006). However, mixed questions of law and fact that are not based on evaluations of credibility or demeanor, such as the question of whether an interrogation is custodial, are reviewed de novo. *Jeffley v. State*, 38 S.W.3d 847, 853 (Tex. App.—Houston [14th Dist.] 2001, pet. ref'd).

"The Fifth Amendment prohibits the government from compelling a criminal suspect to bear witness against himself." *Pecina v. State*, 361 S.W.3d 68, 74–75 (Tex. Crim. App. 2012) (citing U.S. CONST. amend. V ("No person . . . shall be compelled in any criminal case to be a witness against himself.")); *see also* U.S. CONST. amend. VI (providing that accused has right to assistance of counsel for his defense). In *Miranda v. Arizona*, the Supreme Court crafted safeguards to protect this "privilege against self-incrimination" in the inherently coercive atmosphere of custodial interrogations. 384 U.S. 436, 444, 455–56, 86 S. Ct. 1602, 1612, 1617–

18 (1966). Texas has incorporated the requirements of *Miranda* into Code of Criminal Procedure article 38.22, which sets out specific rights—such as the right to remain silent and the right to an attorney—that must be provided to an accused during a custodial interrogation. *See* TEX. CODE CRIM. PROC. ANN. art. 38.22, § 2–3 (West Supp. 2016).

"Before questioning a suspect who is in custody, police must give that person *Miranda* warnings." *Pecina*, 361 S.W.3d at 75. "Only if the person voluntarily and intelligently waives his *Miranda* rights, including the right to have an attorney present during questioning, may his statement be introduced into evidence against him at trial." *Id.*; *see also* TEX. CODE CRIM. PROC. ANN. art. 38.21 (West 2005) (providing that statement of accused may be used as evidence against him if it appears that statement was freely and voluntarily made).

A statement is involuntary if it was taken in violation of due process or due course of the law or because the statement was not freely given due to coercion, force, or improper influence. *Wolfe v. State*, 917 S.W.2d 270, 282 (Tex. Crim. App. 1996). In determining whether a statement was made voluntarily, we consider the totality of the circumstances under which the statement was obtained, including such factors as the length of detention, denial of access to family members, lack of sleep, and lack of food. *Nickerson v. State*, 312 S.W.3d 250, 258–59 (Tex. App.—Houston [14th Dist.] 2010, pet. ref'd). "The ultimate question is whether [the

appellant's] will was overborne." *Creager v. State*, 952 S.W.2d 852, 856 (Tex. Crim. App. 1997). Of principal concern are the characteristics of the accused and the details of the interrogation. *Davis v. State*, 313 S.W.3d 317, 337 (Tex. Crim. App. 2010).

"Trickery or deception does not make a statement involuntary unless the method was calculated to produce an untruthful confession or was offensive to due process." *Creager*, 952 S.W.2d at 856; *Shepherd v. State*, 489 S.W.3d 559, 571 (Tex. App.—Texarkana 2016, pet. ref'd). In determining the voluntariness of a confession, police falsehoods are relevant. *See Frazier v. Cupp*, 394 U.S. 731, 739, 89 S. Ct. 1420, 1425 (1969); *Green v. State*, 934 S.W.2d 92, 99 (Tex. Crim. App. 1996). However, the effect of a lie "must be analyzed in the context of all the circumstances of the interrogation." *Mason v. State*, 116 S.W.3d 248, 257–58 (Tex. App.—Houston [14th Dist.] 2003, pet. ref'd) (quoting *Miller v. Fenton*, 796 F.2d 598, 607 (3rd Cir. 1986) and citing *Frazier*, 394 U.S. at 737–39, 89 S. Ct. at 1424–25).

B. Analysis

Appellant first argues that his August 23, 2010 statement was involuntary. The trial court concluded, however, that appellant's confession was voluntary. The trial court found that appellant was properly advised of his *Miranda* rights. This finding is supported by the record, based on both Sergeant Cisneros's testimony

and the video-recording of appellant's statement. Appellant himself testified that he could not remember whether he had been read his *Miranda* warnings while speaking to Sergeant Cisneros prior to giving his recorded statement, and he agreed that he had received the warnings prior to giving his recorded statement.

Appellant complains that the police arrested him to obtain his confession, that Sergeant Cisneros failed to tell him that he was charged with murder, failed to inform him of any potential sentences, and failed to otherwise inform him of the importance of a recorded confession. Appellant argues that police failed to account for his limited education in informing him of his rights. Although he testified that he completed school through the tenth grade and never obtained a diploma, he does not cite any evidence that he is mentally disabled or was unable to understand his rights. The fact that Sergeant Cisneros did not provide appellant with additional advice or warnings beyond those required by *Miranda* and the Code of Criminal Procedure does not compel a conclusion that appellant's statement was involuntary. Sergeant Cisneros provided the warnings that he was required by law to provide, appellant stated that he understood the warnings, and he affirmatively waived his rights. *See* TEX. CODE CRIM. PROC. ANN. art. 38.21; *Pecina*, 361 S.W.3d at 75.

Nor does the record demonstrate that appellant's statement was obtained through the use of coercion, force, or improper influence. *See Wolfe*, 917 S.W.2d at

282. Appellant argues that "the police were concerned primarily with securing a statement on August 20, 2010 and August 23, 2010" and that Sergeant Cisneros "admitted that he was trying to trick the appellant into giving him a statement" by falsely stating that the police had evidence linking appellant to Clarence's murder. Sergeant Cisneros testified that he told appellant the police had evidence linking appellant to Clarence's murder when, in fact, no such evidence existed. However, appellant failed to demonstrate how Cisneros's exaggeration of the evidence against him rendered his confession involuntary.

Rather, other courts have held that "misstating 'the strength of the prosecution's case' against a defendant interferes 'little, if at all,' with a defendant's 'free and deliberate choice' of whether to confess." *Mason*, 116 S.W.3d at 259 (quoting *Green*, 934 S.W.2d at 100) (holding that police officer's statements that intentionally mislead defendant into believing there was eyewitness, when in fact there was no witness, did not render confession involuntary)); *see also Gomes v. State*, 9 S.W.3d 373, 378–79 (Tex. App.—Houston [14th Dist.] 1999, pet. ref'd) (finding appellant's will was not overborne when police "convey[ed] a sense of 'inevitability' to appellant" by telling her polygraph results showed she lied when in fact they did not). "[A] misrepresentation relating to an accused's connection to the crime is the least likely to render a confession involuntary." *Green*, 934 S.W.2d at 100.

Appellant further argues that he was coerced by Sergeant Cisneros's statement to him that he would get a lighter sentence if he confessed. Appellant also points to his testimony that he was scared and felt he was being pressured on August 20, 2010, so he told officers he would come back and confess because he wanted to leave the police station. However, Sergeant Cisneros denied that he coerced appellant in any way. He specifically denied that he showed photographs of the crime scene to appellant or that he told appellant that he ought to confess to get a lighter sentence. The trial court found that Sergeant Cisneros was a credible witness, and we defer to the trial court's determinations of credibility. *See Alford*, 358 S.W.3d at 652. And appellant himself stated during his recorded interview that he was not threatened or made any promises in connection with giving his statement. Furthermore, a general promise of leniency does not compel a conclusion that the statement was involuntary. *See, e.g.*, *Drake v. State*, 123 S.W.3d 596, 603 (Tex. App.—Houston [14th Dist.] 2003, pet. ref'd) (holding that general, non-specific statement that appellant could help herself by confessing did not render her statement involuntary).

Considering the totality of the circumstances under which the statement was obtained, including the facts that appellant's detention was not lengthy, he was not denied access to family members, sleep or food, we conclude that nothing in the

record supports appellant's contention that his statement was involuntary. *See Nickerson*, 312 S.W.3d at 258–59.

Appellant also argues that his confession was obtained in violation of his Fifth Amendment right not to incriminate himself and his Sixth Amendment right to counsel. However, as discussed above, the record demonstrates that appellant was informed of these rights, that he understood them, and that he voluntarily and affirmatively waived them. Appellant points to no evidence in the record that he sought to terminate the interview or that he requested an attorney at any point during his interrogation by Sergeant Cisneros.

Finally, appellant argues that his confession was obtained in violation of *Miranda* because Sergeant Cisneros "deliberately delayed in [informing appellant of his rights in] the instant case because [he] failed to Mirandize the appellant before his polygraph examination and his initial interrogation on August 20, 2010." And he argues that the polygraph examination itself "poses great concern." We observe that the trial court agreed that the jury would not be informed of the polygraph examination, and appellant does not point to any evidence in the record that the jury was informed that appellant took the examination.

Appellant did not complain in the trial court that Cisneros failed to read his *Miranda* warnings prior to the August 20, 2010 interview, nor did appellant complain that police deliberately delayed providing *Miranda* warnings. Our review

of a motion to suppress is subject to traditional error preservation principles. *See Hailey v. State*, 87 S.W.3d 118, 121–22 (Tex. Crim. App. 2002); *see also Vasquez v. State*, 483 S.W.3d 550, 555–56 (Tex. Crim. App. 2016) (complaint that confession was obtained pursuant to impermissible two-step "ask first, warn later" interrogation technique must be preserved by sufficiently specific objection to put trial court on notice as to legal basis for that objection). Thus, by failing to object on these grounds at trial, appellant waived these complaints on appeal. *See Vasquez*, 483 S.W.3d at 555–56.

Furthermore, nothing in the record demonstrates that appellant was in custody when Sergeant Cisneros interviewed him on August 20, 2010—appellant arrived voluntarily at the police station, agreed to speak with Sergeant Cisneros, was not handcuffed, and was free to leave at any time. *See Herrera v. State*, 241 S.W.3d 520, 525 (Tex. Crim. App. 2007) ("When considering custody for Miranda purposes, we apply a reasonable person standard—[a] person is in custody only if, under the circumstances, a reasonable person would believe that his freedom of movement was restrained to the degree associated with a formal arrest.") (quoting *Dowthitt v. State*, 931 S.W.2d 244, 254 (Tex. Crim. App. 1996) (internal quotation marks omitted)). The procedural safeguards under *Miranda* are only applicable to custodial interrogations by law enforcement officers or their agents, and, thus, do

not apply to appellant's August 20, 2010 interview. *See Wilkerson v. State*, 173 S.W.3d 521, 527 (Tex. Crim. App. 2005).

Accordingly, we conclude that the trial court did not abuse its discretion in denying appellant's motion to suppress and in allowing the jury to consider appellant's statement. *See Story*, 445 S.W.3d at 732; *Tillman*, 354 S.W.3d at 435.

We overrule appellant's first and second issues.

Sufficiency of the Evidence

In his third issue, appellant argues that the evidence was insufficient to establish that he committed the murder of Clarence.

A. Standard of Review

In reviewing the legal sufficiency of the evidence, we review all the evidence in the light most favorable to the verdict to determine whether any rational jury could have found the essential elements of the offense beyond a reasonable doubt. *Jackson v. Virginia*, 443 U.S. 307, 319, 99 S. Ct. 2781, 2789 (1979); *Temple v. State*, 390 S.W.3d 341, 360 (Tex. Crim. App. 2013). In reviewing sufficiency challenges, we defer to the jury's findings and conclusions, as it was the jury's responsibility to resolve conflicts in the testimony, to weigh the evidence, and to draw reasonable inferences from the basic facts in determining whether the defendant was guilty of the crime of which he was accused. *See Hooper v. State*, 214 S.W.3d 9, 13 (Tex. Crim. App. 2007).

"Direct evidence and circumstantial evidence are equally probative, and circumstantial evidence alone may be sufficient to uphold a conviction so long as the cumulative force of all the incriminating circumstances is sufficient to support the conviction." *Ramsey v. State*, 473 S.W.3d 805, 809 (Tex. Crim. App. 2015) (citing *Winfrey v. State*, 393 S.W.3d 763, 771 (Tex. Crim. App. 2013), and *Hooper*, 214 S.W.3d at 13). "'When the record supports conflicting inferences, we presume that the jury resolved the conflicts in favor of the verdict, and we defer to that determination.'" *Blea v. State*, 483 S.W.3d 29, 33 (Tex. Crim. App. 2016) (quoting *Dobbs v. State*, 434 S.W.3d 166, 170 (Tex. Crim. App. 2014)). The jury, as the judge of the facts and credibility of the evidence, may choose to believe or not believe the witnesses, or any portion of their testimony, despite contradictory evidence. *Sharp v. State*, 707 S.W.2d 611, 614 (Tex. Crim. App. 1986).

A person commits the offense of murder if he intentionally or knowingly causes the death of an individual, or if he intends to cause serious bodily injury and commits an act clearly dangerous to human life that causes the death of an individual. *See* TEX. PENAL CODE ANN. § 19.02(b) (West 2011).

B. Analysis

Appellant argues that the evidence was insufficient to show that he committed the murder of Clarence. However, the record demonstrated appellant had a dating relationship with Clarence and that they had a child together.

Appellant testified at trial that he visited Clarence on the day before her murder, that she broke up with him, and that he was hurt. The record further demonstrates that Clarence was found dead in her bedroom with an electrical cord around her neck and that the cause of her death was asphyxia by ligature strangulation. Detective Ward testified that there were no signs of forced entry and that there was no sign of a struggle anywhere in the house except in the bedroom where Clarence and the baby were found dead. Ward, Parks, and Cisneros all testified that this indicated that the murderer was someone Clarence knew and allowed into the house. And Detective Ward also testified that he found a note from Clarence to appellant ending their relationship at the scene of the crime.

Furthermore, the jury saw appellant's recorded statement, in which he told Cisneros that he visited Clarence on the day she died. In his statement, he said that Clarence told him she did not think their relationship was going to work out because of his romantic involvement with the other woman and because she had also started a relationship with another man. Clarence asked him to leave, and he tried to hug her, but she pushed him away. He said that at that point, something took over his body and he lost control and, before he knew it, "they were dead." Appellant told Cisneros that he did not remember how Clarence and the baby had died and that he did not admit doing the crime itself. He reiterated that something had just come over him and he had no control over himself. He further stated that

after he realized Clarence and the baby were dead, he left the house in a daze and returned home. He stated that he later attended a bachelor party with a friend. Appellant also stated that he was sorry for what happened and that if he had it to do over again, he would have just left Clarence's house after she broke up with him.

Thus, the evidence was sufficient to establish that appellant intentionally or knowingly caused Clarence's death by strangling her with an electrical cord. *See* TEX. PENAL CODE ANN. § 19.02.

Appellant contends that there was no DNA or other physical evidence linking him to the murder. However, such evidence is not required to support a conviction where, as here, the cumulative force of all the incriminating circumstances—including appellant's statement to police—is sufficient to support the conviction. *See Ramsey*, 473 S.W.3d at 809. Appellant also contends that the police investigated several other suspects. The jury was presented with this evidence and was the sole judge of the weight to be given to these facts. *See Sharp*, 707 S.W.2d at 614; *see also Blea*, 483 S.W.3d at 33 ("'When the record supports conflicting inferences, we presume that the jury resolved the conflicts in favor of the verdict, and we defer to that determination.'").

Finally, appellant contends that the only evidence linking him to the crime was his statement given to police on August 23, 2010. As discussed above, this evidence was properly admitted, and it was within the jury's purview to consider

appellant's statement in weighing the evidence in this case. *See Hooper*, 214 S.W.3d at 13; *Sharp*, 707 S.W.2d at 614.

We conclude that a rational jury could have found beyond a reasonable doubt that appellant intentionally or knowingly caused Clarence's death by strangling her with an electrical cord. *See Jackson*, 443 U.S. at 319, 99 S. Ct. at 2789; *Temple*, 390 S.W.3d at 360.

We overrule appellant's third issue.

Conclusion

We affirm the judgment of the trial court.

Evelyn V. Keyes
Justice

Panel consists of Justices Keyes, Higley, and Lloyd.

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