



COURT OF APPEALS
EIGHTH DISTRICT OF TEXAS
EL PASO, TEXAS

JULIO CARDENAS,	§	No. 08-20-00053-CR
	§	
Appellant,	§	Appeal from the
	§	
v.	§	109th District Court
	§	
THE STATE OF TEXAS,	§	of Andrews County, Texas
	§	
Appellee.	§	(Trial Court No. 6813)

OPINION

A jury acquitted appellant Julio Cardenas of the offense of capital murder but convicted him of the lesser included offense of manslaughter, and assessed punishment at fifteen years' imprisonment. *See* TEX. PENAL CODE ANN. § 19.04(a). The district court rendered judgment on the verdict. The sole issue on appeal is the legal sufficiency of the evidence to support the conviction. Finding the evidence legally sufficient, we affirm.

I. BACKGROUND

On October 22, 2015, a grand jury indicted Cardenas for intentionally and knowingly causing the death of J.A., an individual younger than ten years of age.¹ *See id.* § 19.03(a)(8).

¹ To protect the identity of the child, who was a minor at the time of the charged offense, this opinion will refer to him by his initials, J.A. *See* TEX. R. APP. P. 9.10(a)(3), (b)-(d). Similarly, J.A.'s twin brother will be referred to as J.B. *See id.*

Specifically, the charge alleged the child's death was caused by: "blunt force to the head and/or torso, with the hand or hands, and/or by striking with or against an object or surface unknown, and/or by shaking, and/or by throwing, and/or by dropping, in a manner which is unknown to the Grand Jury." The case was tried to a jury from November 12, 2019, to November 15, 2019.

The Events Leading to J.A.'s Death

Viewing the evidence in the light most favorable to the verdict, the record presented the events and circumstances. Jennifer Muniz² testified she met Cardenas at the end of 2011. She was then living in her mother's Fort Worth home, along with her three children, her mother, and her mother's boyfriend. In January 2013, she became pregnant with her first child with Cardenas, giving birth to their daughter in late September. Cardenas soon moved to Andrews for work. Months later, in February 2014, Jennifer joined him with her children in tow.

On October 29, 2014, Jennifer Muniz gave birth to twin boys, J.A. and J.B. Cardenas was also the father of the twins. Having been born premature, the twins were admitted to a neonatal intensive care unit (NICU) of the hospital. J.A. spent a week in the NICU, while J.B. spent twelve days. Jennifer described the twins as being delicate and they required a lot of work such as needing to be fed every four hours.

Approximately a week after both babies were home, Jennifer started noticing bruising on J.A.'s upper lip and a "line of bruising" on the lower part of each boys' arms. Jennifer took pictures of the area of concern and made an appointment with Dr. Vitale, the boys' doctor. After the doctor did blood work, Jennifer was told that everything was fine. Still, Jennifer wondered how a bruise could appear out of nowhere. About a week later, Jennifer and her mother were in the living room with J.A., while Cardenas fed J.B. in the other room. He came running into the living room saying

² For clarity, we refer to Jennifer Muniz throughout this opinion simply by her first name.

the baby was not breathing. As Jennifer held the baby, Cardenas called 911. To help, her mother stuck her finger in the baby's mouth and pulled his tongue down from the roof of his mouth. J.B. then started breathing, but still gasped for air. Once the ambulance arrived, J.B. was breathing better and they said he was fine. At the emergency room, Jennifer and Cardenas were further assured that J.B. was "completely fine."

On the morning of December 17, Cardenas and Jennifer took J.A. and J.B. to their pediatrician. Both babies were constantly crying, throwing up, and not wanting to keep any food down. Jennifer was also concerned that she had seen a little bit of swelling under J.A.'s arm and, when she moved the arm, she could hear "a crackling noise, like a bag of chips." After Jennifer showed Dr. Vitale J.A.'s arm, she was told there was nothing wrong. When Jennifer pressed for more information, she was told to make an appointment and return the next day.

Cardenas next drove the family to the hospital in Odessa for Jennifer's appointment with her doctor. Along with the twins, their one-year-old daughter also made the trip. On the way, Jennifer sat in the backseat to feed the twins and change their diapers and clothes. On arrival, when Jennifer exited the truck, the boys were asleep in the car seat, together, as she usually positioned them. As she left the vehicle, Jennifer described, "[t]hey were asleep, they were not awake. They were not throwing up. They were perfectly fine."

Minutes into her appointment, Jennifer received a call from Cardenas telling her the baby was not breathing. She responded, "Why are you calling me? Go to the emergency room. You're right here. Go and take him in. . . . I'm on my way, I'm on my way. I'm coming, I'm coming." At the time, Jennifer assumed it was J.B. who had stopped breathing as he had done when they had earlier called 911. When she got to the emergency room, Jennifer saw Cardenas standing in the hallway. Jennifer was frantic looking for her baby pulling open random curtained areas. She was soon taken to where J.A. was receiving care. A number of people were standing around him trying

to get him to breathe. Eventually, the medical staff told Jennifer there was no medical help for J.A. in Odessa, and he would need to be life-flighted to another hospital. As a result, Jennifer and J.A. were flown to Cook Children's Hospital in Fort Worth. Cardenas then drove J.B. and the rest of their children to be with Jennifer and J.A.

The medical staff in Fort Worth told Jennifer and Cardenas there was nothing they could do for J.A. He died on December 18, 2014.

Jennifer testified Cardenas told her he was playing on his phone, after she left for her appointment, when he heard J.A. spit up in the backseat. After cleaning J.A., he returned to his phone. Then, when he later turned around, J.A. was not breathing. Cardenas told Jennifer he then "grabbed the baby, started hitting the baby in the back, started hitting the baby in the chest," and "started shaking the baby," to get him to breath.

The jury also heard a recorded statement that Cardenas gave to police officers after he was arrested.³ Cardenas told police that Jennifer fed both J.A. and J.B. while they were on their way to her doctor's appointment. After she made them burp, they both fell asleep while riding in the truck, along with their one-year-old daughter. On arrival, after Jennifer exited the truck, he parked in the parking lot and got on his phone. While he was on the phone, he heard one of the babies throwing up. When he turned to look, he saw vomit all over the baby. He also smelled the baby needed a diaper change. He grabbed the baby, cleaned him up, changed his diaper, and put him back in his car seat where he continued to sleep. It took about fifteen or twenty minutes from start to finish.

Another fifteen or twenty minutes passed when he noticed the other baby started doing the same. He got scared when he saw his son was not "reacting." Calling out the baby's name twice,

³ Because the recorded interview of Cardenas was conducted in Spanish (Defendant's Exhibit 1), a certified translation of the interview was also provided as an aid for the jury (Defendant's Exhibit 2).

Cardenas said, [J.A.] “don’t do this to me.” He then turned him over and said, “Son, react, react. Son, please. React, please. Son, react.” Because the baby wasn’t breathing, Cardenas became more scared and desperate. He started the truck and drove to the entrance of the hospital. Bringing both babies and his daughter with him, he ran into the hospital asking for help.

When asked, Cardenas denied he hurt his child stating, “I know I didn’t hurt my child.” When pushed for an explanation, Cardenas answered, “How can I know that if when I was running with the baby I told you that I felt the baby was limp? I felt -- how do you say it? Loose. I already felt him that way when I was running with him, and I don’t know if that hurt him.” When asked whether he thought he had hurt his child, Cardenas answered, “Within all of this, within the fact that he died, I feel terrible that I wasn’t able to take care of my baby which is something that is never going to go away. I don’t believe I did him wrong, and if I did, it wasn’t because I tried to hurt my child. It’s not that I tried to hurt my child. To me this is something so unfair. To me it is. If this was some kind of negligence that I hurt him, I won’t hurt my other children.”

The Medical Testimony

a. The cause of death

Dr. Susan Roe, the Tarrant County Deputy Medical Examiner, performed an autopsy on J.A. on December 19, 2014. In her autopsy report, which was entered into evidence, Dr. Roe listed J.A.’s cause of death as a homicide by “Battered Infant Syndrome.” She clarified at trial that battered infant syndrome means “repeated episodes of trauma over time.” Dr. Roe testified her autopsy showed J.A. had experienced at least three episodes of traumatic events. He had six fractured ribs and a classic metaphyseal lesion on his femur. The fractures and lesion showed signs of healing, indicating the injuries must have occurred sometime before December 17.

Dr. Roe also testified that J.A. had hemorrhages in several layers of his brain, eyes, and spinal cord. Specifically, she testified J.A. had a hemorrhage in the subgaleal layer of his brain

caused by an external “blunt force trauma” to the crown of his head. Although she admitted she did not know precisely how J.A. was injured, she otherwise testified that J.A.’s death was not from natural causes. She testified the head trauma J.A. experienced was the “terminal event.”

On cross examination, Dr. Roe was asked about other conditions that were noted on examination of J.A. She testified that J.A. had an atrial septal defect, which can result in hypoxic ischemic encephalopathy. She explained it was a structural defect seen in J.A.’s heart. Because it was “pretty small,” however, she testified it was not going to be creating a lot of issues; sometimes deoxygenated blood mixes with oxygenated blood in the atrium of the heart. Dr. Roe also diagnosed J.A. with disseminated intravascular coagulopathy, which causes tiny blood clots in all of the body’s organs. Ultimately, she testified that neither hypoxic ischemic encephalopathy nor disseminated intravascular coagulopathy could have caused the trauma she observed to J.A.’s brain.

Dr. Jamye Coffman, the medical director of the child abuse team at Cook Children’s Hospital, evaluated J.A. on December 18, 2014. She testified that her exam, before his death, revealed “multiple right-sided rib fractures,” and a fracture of his right thigh bone, which was consistent with somebody twisting and pulling the leg. Dr. Coffman also observed severe retinal hemorrhages that were pulling J.A.’s retinas off the back of his eyes. She explained that this type of retinal hemorrhage could only be caused by “massive trauma,” like a television falling on a child, or being in a massive car wreck. Because both parents told her that J.A. had no history of that kind of trauma, she diagnosed him with abusive head trauma.

Dr. Coffman testified, based on the injuries sustained by J.A., that he suffered severe traumatic forces to the head. The bleeding around his brain, him having stopped breathing, and seeing what happened to his eyes would not occur if he had simply been jostled. Those injuries are not seen with people carrying their babies in backpacks or riding with them on horses. She further

described that children “falling out of second story windows,” or “falling down stairs,” had not been seen as having sustained brain injuries as were noted on J.A.’s autopsy report. She concluded that his injuries had to be caused by a severe impact to the head. Dr. Coffman also testified the diffuse bleeding around the brain and the bleeding in the eyes “requires a severe acceleration-and-deceleration” of the head being “moved violently backward and forward and rotation around.” She further noted that patting a choking child on the back, or running with it through a parking lot, would not cause the type of injuries noted on J.A.

b. The timing of J.A.’s injuries

Dr. Roe and Dr. Coffman both testified J.A. suffered his fatal head injury when he was in the sole custody of Cardenas. Dr. Roe testified she had medical documentation showing that J.A. was acting normal, neurologically, when his pediatrician examined him on December 17. He needed treatment for a severe head injury shortly after being in the sole care of Cardenas.

Dr. Coffman also testified that J.A. would have experienced symptoms quickly after suffering his head injury. Within minutes, J.A. would have had a change in consciousness, or stopped breathing. She further described that a baby of J.A.’s age relied on normal brain function to coordinate the sucking and swallowing reflex used in feeding. Both Jennifer and Cardenas had each reported that J.A. had eaten just before Jennifer left him in the truck with Cardenas. As a result, Dr. Coffman opined there was not a nonviolent, nontraumatic way that the child could have received his injuries. And, she further testified the child’s severe head trauma could not have been present during the time the baby was fed, or engaged in sucking and swallowing. Based on the history given by the parents, J.A. became symptomatic of the head trauma during the time he was in the car with Cardenas.

The Verdict

The jury returned a verdict finding Cardenas not guilty of capital murder, as charged in the

indictment, but guilty on the lesser included offense of manslaughter. After a punishment hearing, the jury assessed a sentence of confinement in prison for a term of fifteen years and no fine, which the trial court later imposed. This appeal followed.

II. LEGAL SUFFICIENCY OF THE EVIDENCE

On appeal, Cardenas's sole issue challenges the legal sufficiency of the evidence to support the jury's finding of guilt on the lesser included offense of manslaughter.

A. Standard of Review

The Due Process Clause requires every conviction to be supported by legally sufficient evidence. *Harrell v. State*, 620 S.W.3d 910, 913 (Tex. Crim. App. 2021). In a legal sufficiency challenge, we focus solely on whether the evidence, when viewed in the light most favorable to the verdict, would permit *any* rational jury to find the essential elements of the offense beyond a reasonable doubt. *See Jackson v. Virginia*, 443 U.S. 307, 319 (1979); *Brooks v. State*, 323 S.W.3d 893, 912 (Tex. Crim. App. 2010). This standard gives full play to the responsibility of the fact finder to resolve conflicts in the testimony, weigh the evidence, and draw reasonable inferences from basic facts to ultimate facts. *Nisbett v. State*, 552 S.W.3d 244, 262 (Tex. Crim. App. 2018). An appellate court cannot act as a thirteenth juror and make its own assessment of the evidence. *Id.* "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." *Dobbs v. State*, 434 S.W.3d 166, 170 (Tex. Crim. App. 2014) (citing *Jackson*, 443 U.S. at 319). If a rational trier of fact could have found the defendant guilty, we will not disturb the verdict on appeal. *Fernandez v. State*, 479 S.W.3d 835, 838 (Tex. Crim. App. 2016).

B. Applicable Law

A person commits the offense of manslaughter if he recklessly causes the death of an individual. *See* TEX. PENAL CODE ANN. § 19.04(a). "A person acts recklessly, or is reckless, with

respect to circumstances surrounding his conduct or the result of his conduct when he is aware of but consciously disregards a substantial and unjustifiable risk that the circumstances exist or the result will occur.” *Id.* § 6.03(c). “The risk must be of such a nature and degree that its disregard constitutes a gross deviation from the standard of care that an ordinary person would exercise under all the circumstances as viewed from the actor’s standpoint.” *Id.*

C. Analysis

Cardenas argues there was no eyewitness testimony of the incident or other direct evidence establishing that he recklessly caused the death of J.A., such that he created a risk constituting gross deviation from the standard of care of an ordinary person in the circumstances. He urges that, at most, his conduct was done to try and help J.A. breathe, and he immediately sought medical assistance for him. He contends there was not legally sufficient evidence to sustain the State’s burden to prove he is guilty of manslaughter. We disagree.

Direct evidence of the elements of the offense is not required. *Hooper v. State*, 214 S.W.3d 9, 14 (Tex. Crim. App. 2007). A jury is permitted to make reasonable inferences from the evidence presented at trial, and circumstantial evidence is as probative as direct evidence in establishing the guilt of the actor. *Id.* 14–15. Circumstantial evidence alone may be sufficient to establish guilt. *Id.* at 15. Proving an injury or death of a child case often depends on circumstantial evidence because “there is rarely direct evidence of exactly how the child’s injuries occurred.” *Williams v. State*, 294 S.W.3d 674, 683 (Tex. App.—Houston [1st Dist.] 2009, pet. ref’d).

Here, the State relied on proving: (1) that J.A. sustained injuries caused by external blunt force trauma; and (2) that Cardenas had sole access to J.A. at the time he sustained his fatal injury. “Texas case law is replete with holdings that when an adult defendant has had sole access to a child at the time its injuries are sustained, the evidence is sufficient to support a conviction for injury to a child, or murder if the child dies.” *Garcia v. State*, 16 S.W.3d 401, 405 (Tex. App.—El

Paso 2000, pet. ref'd); *see also Bearnth v. State*, 361 S.W.3d 135, 140 (Tex. App.—Houston [1st Dist.] 2011, pet. ref'd) (upholding verdict based on evidence of sole access and medical testimony of when injury must have occurred); *Bryant v. State*, 909 S.W.2d 579, 583 (Tex. App.—Tyler 1995, no pet.) (finding sufficient evidence to support the conviction where evidence showed child had been left alone with defendant and injuries to child occurred approximately thirty minutes before child being brought to the emergency room); *Elledge v. State*, 890 S.W.2d 843, 846 (Tex. App.—Austin 1994, pet. ref'd) (finding conviction for injury to a child was supported by undisputed medical testimony placing adult defendant alone with child when fatal injuries were sustained).

After reviewing the trial record, we hold the evidence was sufficient to support Cardenas' conviction for recklessly causing the death of J.A. Based on performance of an autopsy and review of medical records, the medical examiner testified that J.A. died from acute trauma caused by an external blunt force blow to the top of his head. As well, evidence established repeated episodes of trauma over time. The Medical examiner summarized the cause of death as "battered infant syndrome." While the testifying experts did not know precisely how J.A. was injured, one medical expert testified his injuries were worse than those seen in children who had fallen from a second-story window. Although seven-week-old J.A. had some health issues from being born prematurely, Dr. Roe testified his pre-existing conditions could not have caused the brain trauma that resulted in his death.

The critical question then is timing: who had control of J.A. when his fatal injury occurred. Dr. Coffman testified J.A.'s symptoms would have started within minutes of sustaining his brain injury. She also testified his injuries would have prevented him from coordinating the suck and swallow functions that babies need to eat. J.A.'s pediatrician gave him a clean bill of health the morning of December 17. Jennifer testified she sat in the backseat with J.A. and J.B. to feed them

while Cardenas drove them from the pediatrician's office to Odessa. In his post-arrest interview with police, Cardenas agreed Jennifer fed both J.A. and J.B. on their way to Odessa. Jennifer said when she got out of the truck for her appointment, both boys "were perfectly fine." The next time Jennifer saw J.A., he was in the emergency room unable to breathe. The testimony of Dr. Coffman—coupled with Jennifer's testimony that she fed J.A. and he was perfectly fine when she left him with Cardenas—would support a rational trier of fact's conclusion that Cardenas was responsible for causing the blunt force trauma to J.A.'s head.

Cardenas attempted to develop a theory at trial that J.A. died because of complications from being born prematurely. J.A. was diagnosed at birth with an atrial septal defect and he also had a condition known as disseminated intravascular coagulopathy, which causes tiny blood clots in all of the body's organs. Dr. Roe testified, however, that neither hypoxic ischemic encephalopathy nor disseminated intravascular coagulopathy could have caused the trauma she observed to J.A.'s brain.

Cardenas also argued that perhaps one of Jennifer's older children had injured J.A. Jennifer has three older daughters from a previous relationship that were living with J.A. at the time of his death. Cardenas claimed it is possible one of the girls accidentally dropped J.A. and did not tell him or Jennifer. The medical testimony established a timeline for J.A.'s brain injuries, however, that is inconsistent with J.A. being dropped by one of his older siblings. Taking the evidence in the light most favorable to the verdict, as required by our standard of review, and based on the *Jackson* analysis, we conclude that a rational jury could have found Cardenas guilty of manslaughter beyond a reasonable doubt.

We overrule Cardenas' sole issue.

III. CONCLUSION

For all these reasons, we affirm.

GINA M. PALAFOX, Justice

April 29, 2022

Before Rodriguez, C.J., Palafox, and Alley, JJ.

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