

Opinion issued December 22, 2011.



In The
Court of Appeals
For The
First District of Texas

NO. 01-09-01077-CR

ROYCE CLYDE ZEIGLER, II, Appellant

V.

THE STATE OF TEXAS, Appellee

**On Appeal from the 10th District Court
Galveston County, Texas
Trial Court Case No. 07CR3753**

MEMORANDUM OPINION

A jury convicted Royce C. Zeigler, II, of the offense of capital murder for the death of his step-daughter, two-year-old Riley Ann Sawyers, and he received an automatic sentence of life imprisonment. *See* TEX. PENAL CODE ANN. §§ 7.02(a)(2), (b), 19.02(b)(1), 19.03(a)(8) (West 2011). On appeal,

Zeigler contends that: (1) the evidence presented at trial was legally insufficient to prove that he caused Riley's death or that he had the requisite mental state to be found guilty of capital murder; (3) the trial court committed reversible error by instructing the jury on the law of parties over his no-evidence objection; and (4) the trial court erred in denying his pre-trial motion to suppress his videotaped statement. Finding no error, we affirm.

Background

Events before Riley's death

Zeigler became acquainted with Kimberly Trenor through an online gaming website in early 2007. The two eventually arranged to meet. At that time, Trenor and her toddler daughter, Riley, lived in Ohio with Sheryl Sawyers, Riley's paternal grandmother.

Trenor, who was still in high school, moved into Sheryl's home about three months after Riley was born. Sheryl was very involved in taking care of Riley. She shared her bedroom with Riley and spent her time off from work taking care of Riley. Sheryl's son, Riley's father, also spent time with Riley. Sheryl explained that while Trenor and Riley lived with her, they used time-outs to discipline Riley, and never used any spanking or other physical punishment. She said that Trenor was calm and quiet, and she

seldom disciplined Riley. Trenor could tune out Riley's temper tantrums. Sheryl never saw Trenor become really upset about anything and never saw any signs of physical abuse on Riley.

Soon after their first face-to-face meeting, Trenor and Riley moved to Texas to live with Zeigler. Before leaving Ohio, Trenor and Riley's father met with Children's Services to work out a visitation agreement. Zeigler prepared for their arrival by renting a home, and he and Trenor married in a civil ceremony.

Zeigler had difficulty adjusting to living with a toddler. At work, Zeigler complained to his co-workers that Riley was a brat—unruly, hard to discipline, and a little out of control. He expressed frustration that Trenor would not discipline Riley, and they were going to have to start spanking Riley with a belt. The employee cautioned Zeigler to be careful with Riley because she was small and was in a new place. Another recommended that Zeigler and Trenor come to some agreement about how to discipline Riley. Together, Zeigler and Trenor composed a list of "Rules for Riley," which included bedtime, naptime, behavior in public, keeping toys picked up, and listening to her parents.

Co-workers noticed that Zeigler's temper flared a number of times during his frequent telephone conversations with Trenor. Zeigler seemed

frustrated with Riley's behavior and told Trenor to spank Riley to get her to behave. He also suggested that she use a belt to hit Riley. One co-worker witnessed a telephone call during which Zeigler screamed at Trenor, ended the call abruptly, and stormed out of the office.

Zeigler's mother, Nellie Zeigler, noticed problems with the way Zeigler and Trenor disciplined Riley. Once, when Nellie stopped by unannounced, Trenor answered the door with a belt slung over her shoulder. When Nellie asked Trenor what was wrong, Trenor told her that she had just disciplined Riley and put her to bed. Another time, Nellie noticed a bruise on Riley's hip. When she confronted Zeigler and Trenor about the injury, Zeigler looked ashamed and told her that it would never happen again.

Events surrounding Riley's death

On July 24, the evening before Riley's death, Zeigler told Trenor that he could not stand Riley causing trouble in public and could not take any more of the child custody problems with Sheryl. Zeigler said he would continue to pay for the house and take care of Trenor's financial needs, but that he was going to pack his bags and leave. Trenor pleaded with Zeigler, "Don't go, don't go. Everything will change." So, he stayed the night.

The next morning, Zeigler e-mailed his employer, saying that he was ill and would try to come into work later. Zeigler's e-mail records show that

he spent a significant amount of time that day handling work matters from home.

Zeigler told the police several stories about what happened that day. First, Zeigler claimed that he took some cold medicine and was sick in bed all day. Zeigler claimed that, while he stayed in bed, he kept hearing yelling and screaming. Zeigler also claimed that he stayed in bed ill for part of the day and later went for a drive. When he returned, Riley was dead. In a third scenario, Zeigler claimed that he had been sick in bed, but later got up and went outside for a little bit. He heard Trenor yelling at Riley, and when he came back in the house, he found Riley unconscious and purple and began CPR. He offered to bring Riley to a friend's house so that the friend could take her to the emergency room, but by the time they reached a decision, it was too late. In relating this third version, Zeigler told the detectives, "It's partially my fault 'cause if I hadn't gotten onto [Trenor], it would have never happened." An investigator remarked, "Okay. So now I'm understanding. So [Trenor] changed it. Is that what happened?" Zeigler nodded his head up and down in response.

The medical examiner determined that Riley died from blunt force trauma to the head. He found that Riley had sustained three skull fractures which were caused by having her head strike a fixed object with at least

three separate impacts. The vertebra at the base of Riley's skull was also fractured. These fractures indicate the magnitude of the force applied to Riley's skull and brain, and any one of them alone would have been lethal. The placement of the fracture and the force of impact would cause the blood vessels to her brain to shear then rupture, causing bleeding over the brain's surface. The State's forensic anthropology expert agreed with the medical examiner's evaluation. Both opined that Riley suffered three skull fractures and a separation of the vertebra, that the fractures resulted from multiple applications of force, and that they most likely were not accidental.

The medical examiner explained how these injuries would manifest themselves. First, the victim would suffer severe pain from the impact to the back of the head, which would cause bruising and the skull fractures. She would have a terrible headache and possibly would have seizures. Consistent with those symptoms, he noted, was the finding that Riley had acetaminophen in her system. Swelling and edema would cause the victim to lose control over her major muscle groups—first her limbs, then speech and gag reflex, then heart, and finally, respiration. She would become comatose and stop breathing as her brain continued to swell over time. Her death would not result immediately from the injuries—she would have shown these signs of progressive neurological deficit over a period of hours.

Events after Riley's death

Late that evening, after Zeigler had placed Riley's body in the bathtub, Zeigler and Trenor went to Walmart to buy supplies in order to prepare Riley's body for disposal. They divided the items, and each got in a separate checkout lane. One bought two pairs of gloves—one large and one small, a first aid kit, and bleach. The other bought cement mix, a shovel, trashbags, carabiners, a plastic container, an additional pair of large gloves, two bleach respirators, duct tape, and an anchor chain. They cleaned Riley's body with bleach to remove DNA, Trenor clothed the body, and Zeigler placed it in several trash bags inside the plastic container.

The next night, Trenor and Zeigler put the container in the car and drove to a rural area with the intent of burying Riley. Zeigler began to dig a hole but stopped before it was deep enough. He could not continue, so they returned with the container and placed it in the family storage unit. Over the next several weeks, Zeigler and Trenor tried once again to bury the container, but that attempt, too, was unsuccessful. Eventually, they drove to Galveston Bay. They stopped by an abandoned railroad bridge, where Zeigler hoisted the container over the rail and dumped it into the water. Zeigler kept his cell phone off that night.

Less than two weeks after Riley's death, Zeigler and Trenor attended Zeigler's company picnic. Zeigler's co-workers noted that Zeigler appeared at ease, and both he and Trenor seemed to enjoy themselves chatting with other employees and their families, playing softball, and drinking margaritas. Zeigler had responded to the picnic invitation that he, Trenor, and Riley would all attend. Some of his co-workers noted Riley's absence and asked where she was. Zeigler responded to one that Riley was ill and staying with his mother. To another, Zeigler said that his parents were giving them a break and taking care of Riley while they attended the picnic.

Also during August, Nellie, who had come to enjoy spending time with Riley on the weekends, repeatedly asked to see her. Trenor brushed Nellie off, at first saying that Riley was spending the weekend with a friend, and later telling her that Riley would be staying with relatives in Plainview, Texas long enough to establish state residency and give Trenor an advantage in the Ohio custody dispute.

In late October, a man fishing in Galveston Bay found the plastic container containing Riley's body. He opened the container, realized that it contained a dead body, and contacted law enforcement. Because nothing in the container identified Riley, she became known as Baby Grace. In an effort to identify her, sketches were published in the media and on the

Internet. Eventually, the investigation led authorities to suspect that Trenor and Zeigler were involved in Riley's death.

When the news of Baby Grace broke on the Internet, Zeigler's brother Hiram went to Zeigler's home and showed him the Baby Grace sketches. Zeigler reacted with shock—his eyes widened, his jaw dropped, and he began pacing. Trenor, who also was there, showed no reaction. Hiram asked them to call Riley, but they would not. Zeigler tried to put Hiram off by saying, "She's okay. We just talked to her, Hiram." Exasperated, Hiram asked Zeigler to step outside. Hiram continued to press him for information about Riley's whereabouts. Eventually, Zeigler admitted that Riley was not with Trenor's Texas relatives. He told Hiram that Ohio CPS had accused him of molesting Riley and that a CPS worker from Ohio had forcibly removed Riley from the house. He also told Hiram that Riley's Ohio grandmother had kidnapped her.

Meanwhile in Ohio, Sheryl saw the sketches of Baby Grace in an online news article. She thought the clothes looked like an outfit that Riley received the previous Christmas. Then, she noticed that the case was in the Houston area, where Trenor was. Based on her suspicions, Sheryl called the tip hotline provided with the article.

K. Jones, a detective with the Criminal Investigation Division of the Galveston County Sheriff's Department, spoke with Sheryl. Based on what she told him, Jones contacted the Harris County Sheriff's Office and asked them to conduct a child welfare check at Zeigler's home.

Just days before the child welfare check, Zeigler and Trenor had attempted, without success, to commit suicide. Zeigler told the police that he took the overdose of pills for Trenor, but the pills only knocked him out for the day. Each wrote suicide notes. Zeigler's note read, in part, "I take my own life because of guilt for past sins which I confessed before I took my own life. My wife Kimberly Zeigler is innocent and lived in fear with [sic] because of thought of what I might do to her." Trenor wrote, "My heart is black dead. There is nothing left. I cannot live with myself after Riley. I go to be with her."

On the morning of November 12, a Harris County patrol deputy arrived at the home and found only a dog inside. The deputy, believing the house had been abandoned, called the SPCA to remove the dog and touched base with Detective Jones. Just after the animal control officers retrieved the dog through the window, Zeigler drove up in a blue truck.

When he pulled into the driveway, Zeigler was on the telephone with Detective Jones, who had called him about the supposed CPS case. Zeigler

informed Jones that CPS had taken Riley away and that she was either in Ohio with her grandmother or her grandmother's sister. Zeigler also complained to Jones that his mother was constantly on his case about Riley, and that he was tired of all the fighting over Riley, the custody problems, and the accusations of sexual abuse, which he denied. He informed Jones that he was considering getting a divorce because of these problems.

Trenor and Nellie arrived at the home about fifteen minutes later. Trenor, too, was on the telephone with Detective Jones. The patrol deputy spoke again with Jones, recommending that Jones contact the CPS office and police department in Ohio and have them conduct a child welfare check at Sheryl's home to verify whether Riley was there. Nellie also requested a copy of the CPS letter. Trenor told her that she would bring the letter to her family lawyer's office the next day.

On November 13, Trenor created a letter on her home computer to make it look as if it were sent from Ohio CPS on July 14. The text of the letter was consistent with Zeigler's story that CPS had taken Riley back to Ohio and accused Zeigler of sexual abuse.

On November 20, Zeigler called Sergeant Barry with the Galveston County Sheriff's Department, the lead investigator on the Baby Grace case. Sergeant Barry mentioned that he wanted to obtain DNA samples from

them. Zeigler told Sergeant Barry that he and Trenor knew that Baby Grace was not Riley, and said that Sheryl had taken Riley and was hiding her. Zeigler said he would talk to Trenor and have her provide the DNA sample. Zeigler also mentioned to Sergeant Barry that he had the CPS letter.

Jones obtained a copy of the CPS letter and sent it to Ohio CPS officials. A representative verified that the letter was a fake and was not sent from his office.

On November 23, Zeigler agreed to speak with the homicide detectives in connection with their investigation. Zeigler signed a waiver of rights and gave a videotaped statement denying that he knew who Baby Grace was and claiming that he believed Riley was in Ohio. When Zeigler indicated that he might want an attorney present, the police terminated their questioning and took custody of Zeigler.

After spending the night in jail, Zeigler asked to speak again with the detectives, saying that he wanted to talk to someone in criminal investigations because he had some information for them. When they arrived that afternoon, Zeigler voiced concerns about obtaining medication for a heart condition and anxiety, and told them that he wanted to call a family member. The officers informed Zeigler they would take care of letting him make his phone call and that they would relay his concerns to the

jailers. Then, after signing another waiver of rights, Zeigler went on to make his November 24th statement. In this second videotaped statement, Zeigler told the investigators the additional different and inconsistent versions of his activities on the day Riley died.

Zeigler filed a pretrial motion to suppress the November 24th videotaped statement, which the trial court denied. After both sides presented their case to the jury, the State offered its proposed jury charge. Ziegler objected to its inclusion of the law of parties and conspiracy instructions. The trial court overruled those objections and submitted the case to the jury.

Discussion

I. Sufficiency of the evidence

A. Standard of review

Zeigler contends that the evidence presented at trial was insufficient to prove that he caused Riley's death or, alternatively, that he had the requisite mental state to be found guilty of capital murder. An appellate court reviews legal and factual sufficiency challenges using the same standard of review. *Griego v. State*, 337 S.W.3d 902, 902 (Tex. Crim. App. 2011); *Ervin v. State*, 331 S.W.3d 49, 52–56 (Tex. App.—Houston [1st Dist.] 2010, pet. ref'd) (construing majority holding of *Brooks v. State*, 323 S.W.3d 893, 912,

926 (Tex. Crim. App. 2010)). Under this standard, evidence is insufficient to support a conviction if, considering all record evidence in the light most favorable to the verdict, a factfinder could not have rationally found that each essential element of the charged offense was proven beyond a reasonable doubt. *See Jackson v. Virginia*, 443 U.S. 307, 319, 99 S. Ct. 2781, 2789 (1979); *In re Winship*, 397 U.S. 358, 361, 90 S. Ct. 1068, 1071 (1970); *Brooks*, 323 S.W.3d at 899 (plurality op.); *Laster v. State*, 275 S.W.3d 512, 517 (Tex. Crim. App. 2009); *Williams v. State*, 235 S.W.3d 742, 750 (Tex. Crim. App. 2007). Evidence is insufficient under this standard in four circumstances: (1) the record contains no evidence probative of an element of the offense; (2) the record contains a mere “modicum” of evidence probative of an element of the offense; (3) the evidence conclusively establishes a reasonable doubt; and (4) the acts alleged do not constitute the criminal offense charged. *See Jackson*, 443 U.S. at 314, 318 n.11, 320, 99 S. Ct. at 2786, 2789 & n.11; *Laster*, 275 S.W.3d at 518; *Williams*, 235 S.W.3d at 750. The sufficiency of the evidence is measured by the elements of the offense as defined in a hypothetically correct jury charge, which is one that accurately sets out the law, is authorized by the indictment, does not unnecessarily increase the State’s burden of proof or unnecessarily restrict the State’s theories of

liability, and adequately describes the particular offense for which the defendant was tried. *Malik v. State*, 953 S.W.2d 234, 240 (Tex. Crim. App. 1997). If an appellate court finds the evidence insufficient under this standard, it must reverse the judgment and enter an order of acquittal. *See Tibbs v. Florida*, 457 U.S. 31, 41, 102 S. Ct. 2211, 2218 (1982).

An appellate court determines whether the necessary inferences are reasonable based upon the combined and cumulative force of all the evidence viewed in the light most favorable to the verdict. *Clayton v. State*, 235 S.W.3d 772, 778 (Tex. Crim. App. 2007) (quoting *Hooper v. State*, 214 S.W.3d 9, 16–17 (Tex. Crim. App. 2007)). When the record supports conflicting inferences, an appellate court presumes that the factfinder resolved the conflicts in favor of the verdict and defers to that resolution. *Jackson*, 443 U.S. at 326, 99 S. Ct. at 2793; *Clayton*, 235 S.W.3d at 778. An appellate court likewise defers to the factfinder's evaluation of the credibility of the evidence and the weight to give the evidence. *Williams*, 235 S.W.3d at 750. A court treats direct and circumstantial evidence equally: circumstantial evidence can be as probative as direct evidence, and circumstantial evidence alone can be sufficient to establish guilt. *Clayton*, 235 S.W.3d at 778 (quoting *Hooper*, 214 S.W.3d at 13).

B. Capital murder

A person commits the offense of murder if he “intentionally or knowingly causes the death of an individual.” TEX. PENAL CODE ANN. § 19.02(b)(1) (West 2011). A person commits the offense of capital murder if he commits the offense of murder as defined in section 19.02(b)(1) and “the person murders an individual under six years of age.” TEX. PENAL CODE ANN. § 19.03(a)(8). Because our evidentiary sufficiency analysis requires us to measure elements of the offense as defined in a hypothetically correct jury charge for the case, we first consider Zeigler’s contention that the trial court erred in instructing the jury on the law of the parties as a basis for finding Zeigler guilty of capital murder.

1. Law of parties

The Penal Code provides that a person is criminally responsible as a party to an offense if the offense is committed by his own conduct, by the conduct of another for which he is criminally responsible, or by both. TEX. PENAL CODE ANN. § 7.01(a) (West 2003); *see Trenor v. State*, 333 S.W.3d 799, 806 (Tex. App.—Houston [1st Dist.] 2010, no pet.). The Penal Code further provides that a person is criminally responsible for an offense committed by the conduct of another if, acting with intent to promote or assist the commission of the offense, he solicits, encourages, directs, aids, or

attempts to aid the other person to commit the offense. TEX. PENAL CODE ANN. § 7.02(a)(2). When a party is not the primary actor, the State must prove conduct constituting an offense plus an act by the defendant done with the intent to promote or assist such conduct. *Beier v. State*, 687 S.W.2d 2, 3 (Tex. Crim. App. 1985); *Miller v. State*, 83 S.W.3d 308, 313 (Tex. App.—Austin 2002, pet. ref'd).

In determining whether a person acted as a party, the factfinder may consider events occurring before, during, and after the commission of the offense and may rely on the person's actions showing an understanding and a common design to commit the prohibited act. *See Payne v. State*, 194 S.W.3d 689, 694 (Tex. App.—Houston [14th Dist.] 2006, pet. ref'd) (citing *Ransom v. State*, 920 S.W.2d 288, 302 (Tex. Crim. App. 1994)). The evidence must show that at the time of the offense, the parties were acting together, each contributing some part toward the execution of their common purpose. *Escobar v. State*, 28 S.W.3d 767, 774 (Tex. App.—Corpus Christi 2000, pet. ref'd). Evidence is sufficient to convict under the law of parties if the defendant is physically present at the commission of the offense and encourages its commission by words or other agreement. *Trenor*, 333 S.W.3d at 807; *Ransom*, 920 S.W.2d at 302. Participation as a party in a criminal offense may be inferred from circumstances and need not be shown

by direct evidence. *Scott v. State*, 946 S.W.2d 166, 168 (Tex. App.—Austin 1997, pet. ref'd).

The challenged instruction authorized the jury to find Zeigler guilty of capital murder if it found beyond a reasonable doubt that:

on or about the 25th day of July, 2007, in Galveston County, Texas, KIMBERLY DAWN TRENOR AKA KIMBERLY DAWN ZIEGLER, did then and there intentionally or knowingly cause the death of Riley Ann Sawyers, an individual under six years of age, by striking the said Riley Ann Sawyers with or against an object unknown to the Grand Jury or by a manner and means unknown to the Grand Jury and you further believe from the evidence beyond a reasonable doubt that on said date in said County and State, the Defendant ROYCE CLYDE ZEIGLER II, acting with the intent to promote or assist the commission of Capital Murder by KIMBERLY DAWN TRENOR AKA KIMBERLY DAWN ZEIGLER, solicited or encouraged or directed or aided or attempted to aid the said KIMBERLY DAWN TRENOR AKA KIMBERLY DAWN ZEIGLER, in intentionally or knowingly causing the death of Riley Ann Sawyers, an individual under six years of age, by the said KIMBERLY DAWN TRENOR AKA KIMBERLY DAWN ZEIGLER striking the said Riley Ann Sawyers with or against an object unknown to the Grand Jury or by a manner and means unknown to the Grand Jury,

OR

If you find from the evidence beyond a reasonable doubt that the defendant, ROYCE CLYDE ZEIGLER II, entered into a conspiracy with KIMBERLY DAWN TRENOR AKA KIMBERLY DAWN ZEIGLER, to commit the felony offense of Injury to a Child of RILEY ANN SAWYERS and that on or about the 25th day of July, 2007, in the County of Galveston and State of Texas, in the attempt to carry out this agreement, if any, KIMBERLY DAWN TRENOR AKA KIMBERLY DAWN ZEIGLER, did intentionally or knowingly cause the

death of RILEY ANN SAWYERS, an individual under six years of age, by striking the said RILEY ANN SAWYERS with or against an object unknown to the Grand Jury or by a manner and means unknown to the Grand Jury, if she did, and that such offense was committed in furtherance of the unlawful purpose to commit Injury to a Child of RILEY ANN SAWYERS and was an offense that should have been anticipated by the said ROYCE CLYDE ZEIGLER II as a result of carrying out of the agreement, though having no intent to commit it,

THEN

you will find the Defendant ROYCE CLYDE ZEIGLER II guilty of capital murder.

According to Zeigler, the trial court erred in submitting this instruction because the evidence was not sufficient to support a reasonable inference that Zeigler committed any act with the specific intent to assist or encourage Trenor to murder Riley.

A trial court may submit alternate theories of committing the same offense to the jury in the disjunctive for the jury to return a general verdict if the evidence is sufficient to support a finding under any of the theories submitted. *Holford v. State*, 177 S.W3d 454, 461–62 (Tex. App.—Houston [1st Dist.] 2005, pet. ref'd) (citing *Kitchens v. State*, 823 S.W.2d 256 (Tex. Crim. App. 1991)). Under the law of parties, the jury can convict a defendant if it found that he was “present at the commission of the offense and encourage[d] its commission by words or other agreement.” *Ransom*, 920 S.W.2d at 302, *quoted in King v. State*, 29 S.W.3d 556, 564 & n.27

(Tex. Crim. App. 2000). In reviewing the sufficiency of the evidence to support Zeigler's participation as a party, we may consider "events occurring before, during and after the commission of the offense, and may rely on actions of the defendant which show an understanding and common design to do the prohibited act." *Id.* at 564 & n.28.

According to Zeigler, the State's evidence focused on Zeigler's actions following Riley's death in attempting to cover up the offense, which are not sufficient to establish that he had the requisite intent at the time of the murder. We disagree with Zeigler's assessment of the evidence's scope. The record shows that before Riley's murder, Zeigler expressed frustration in managing Riley's behavior and disagreed with Trenor's methods of disciplining her, saying that she was not hard enough on Riley and needed to use physical punishment. Zeigler's co-workers testified to the anger and frustration he expressed to Trenor on this topic during his telephone conversations with her. Zeigler and Trenor developed a list of "Rules for Riley." He endorsed spanking and hitting a two-year-old with a belt as a means of controlling behavior, and looked ashamed when his mother confronted him about a bruise on Riley's hip. The evening before the murder, Zeigler issued an ultimatum to Trenor, saying that he was unwilling to continue living with her and Riley under the conditions that existed and

that something had to change. Contrary to Zeigler's view, these circumstances show more than a minor disagreement about routine discipline.

None of Zeigler's statements concerning his actions and observations on the day Riley was killed is consistent with the symptoms of the gradual decline in brain function that Riley suffered as a result of the skull fractures. The purchases from Walmart, including two pairs of large gloves, one pair of small gloves, and two bleach respirators, support a reasonable inference that Zeigler actively participated in applying bleach to Riley's body to destroy any of his own DNA that might be present. Zeigler took the lead in attempting to dispose of Riley's body, both digging the holes and, finally, dumping the container into the bay. He took pains to dispose of the body in secret and turned off his cell phone to avoid being tracked to a particular location. The jury was entitled to reject the notion that Zeigler only wanted to help Trenor give Riley a proper burial.

Zeigler also actively participated in the cover-up following the murder. He fabricated various stories to explain Riley's absence, including the story about the Ohio CPS worker. He and Trenor seemed relaxed and happy in early August after Riley's death. Trenor prepared the fake letter to buttress Zeigler's CPS story. Also of note, Zeigler and Trenor attempted to

execute their joint suicide pact only after the Baby Grace investigation had led law enforcement to question Riley's disappearance. We hold that sufficient evidence supports the trial court's decision to instruct the jury on the law of parties and finding that Zeigler is guilty of capital murder under that theory.

2. *Causation*

Zeigler also complains that the evidence is insufficient to support a finding that he was actually present when Riley died or that he conspired, promoted, assisted, solicited, encouraged, or directed Trenor to kill Riley. Zeigler's inconsistent and improbable stories of what transpired the day of Riley's murder, however, serve as evidence that he was conscious of his guilt. *See King*, 29 S.W.3d at 562.

Zeigler also made other statements that support the jury's finding. In his first videotaped interview with detectives, Zeigler responded to a detective's demand for the truth by saying, "I told you what happened. I never—I did not harm Riley to kill her. I never did that." In his November 24th interview, Zeigler said, "and the thing is, you know, it's not my nature to hurt children. I never planned on it. And I wasn't in the room the day when all that stuff was going on. I was trying to avoid it because of the ground rules we set in the house before." A jury could reasonably piece

Zeigler's statements together and construe them as a tacit admission that he hurt Riley. Given Zeigler's inconsistent statements to police, a jury also could reasonably disbelieve his contention that he did not kill Riley. The cumulative force of the evidence provides sufficient grounds for a rational jury to find beyond a reasonable doubt that Zeigler caused Riley's death.

3. *Intent*

Zeigler further claims that the evidence does not support a finding that he conspired, promoted, assisted, solicited, encouraged, or directed Trenor to kill Riley, or that Zeigler was aware that Trenor intended to kill Riley. At trial, the State called the medical examiner who performed Riley's autopsy. He testified that Riley died of three separate fractures to her skull, likely caused by her head rapidly decelerating due to contact with a hard surface. The examiner testified that she could not have fallen in such a way to have caused these injuries on her own, and opined that the injuries did not occur unintentionally. This testimony, combined with the evidence discussed above, support the inference that Zeigler intentionally or knowingly caused Riley's death.

In support of his position, Zeigler points to *Louis v. State*, 329 S.W.3d 260 (Tex. App.—Texarkana 2010, pet. granted), in which the Texarkana Court of Appeals reversed and rendered a judgment of acquittal because it

found legally insufficient evidence that the defendant intentionally or knowingly caused the death of the child victim. In that case, the defendant's girlfriend's children made a mess during the night, spreading food and household chemicals on the kitchen floor. While the mother cleaned the kitchen, she asked defendant to deal with the children, which, they understood, meant that he would beat the children with a belt. Throughout the day, the defendant repeatedly beat the two-year-old son. At bedtime, the mother tied his wrists to the closet rod and left him there several minutes before taking him down and putting him to bed. The next morning, she found that her son had died during the night.

The medical examiner opined that the boy died from homicidal violence and blunt force trauma but—unlike the medical examiner who testified in this case—the medical examiner in *Louis* admitted that she could not pinpoint exactly which injury caused the boy's death. She used the term “homicidal violence,” she explained, to take into account the possibility that the boy died from asphyxiation, because he may have had difficulty breathing while hanging in closet. The evidence also showed that the boy had asthma and had not received his asthma medication for at least two days before his death.

Also unlike this case, there was no question that the defendant in

Louis was away from home at work when the mother discovered the boy's body. The defendant equivocated at first about using a belt to beat the children, but consistently maintained that he did not beat the children so hard that it would cause the injuries found on the boy's body. The police officer who questioned the defendant immediately after the incident testified that he did not think that the defendant intended to cause the boy's death and that he believed the death to be accidental. The mother's testimony corroborated the defendant's version of the events. *Id.* at 268. Based on this record, the Texarkana Court of Appeals held that the evidence did not support a finding that the defendant was aware that his conduct in beating the boy was reasonably certain to cause the boy's death. *Id.* at 269.

The *Louis* court of appeals contrasted the facts in *Duren v. State*, 87 S.W.3d 719 (Tex. App.—Texarkana 2002, pet. struck), in which it found sufficient evidence to support a guilty verdict where the defendant gave inconsistent explanations of the cause of the child's injuries; medical doctors testified that the child's injuries could not have resulted from the circumstances explained by the defendant; there were no witnesses to the incident; and the evidence showed that the defendant had an altercation with the child's mother shortly before the child was injured. *Id.* at 724–25, cited in *Louis*, 329 S.W.3d at 269. The *Louis* court also distinguished the case

before it from *Montgomery v. State*, 198 S.W.3d 67 (Tex. App.—Fort Worth 2006, pet. ref'd), noting that there, the appellate court found as sufficient evidence of intent that the defendant gave inconsistent stories about the means by which the child's injuries were sustained; the child was injured while in the sole care of the defendant; a medical doctor testified that the child's head injuries were so significant that a person administering the wounds would have been reasonably certain the injuries would cause death; and the physical size of the defendant, a college football player, relative to the sixteen-month old victim. 329 S.W.3d at 269–70 (citing *Montgomery*, 198 S.W.3d at 87).

Here, the facts are more similar to those in *Duren* and *Montgomery* than those in *Louis*. Zeigler gave inconsistent stories about where he was when Riley died, but by all accounts, he was in or around the house when she did, and none of Zeigler's versions of events is consistent with the medical examiner's testimony about the effects of Riley's injuries. The medical examiner unequivocally testified that any one of the three blows to the back of Riley's head could have resulted in her death, and that they were intentionally inflicted. Thus, *Louis* does not support reversal of the judgment.

II. Denial of Motion to Suppress

Zeigler also contends that the trial court abused its discretion by denying his pre-trial motion to suppress the videotaped statement he made to detectives on November 24, 2007. According to Zeigler, that statement was involuntarily given because it was the product of coercion and thus inadmissible.

A. Standard of review

We review a trial court's ruling on a motion to suppress for an abuse of discretion. *Oles v. State*, 993 S.W.2d 103, 106 (Tex. Crim. App. 1999). An abuse of discretion occurs when the trial court's decision is so wrong as to lie outside the zone of reasonable disagreement. *Cantu v. State*, 842 S.W.2d 667, 682 (Tex. Crim. App. 1992). We review the evidence in the light most favorable to the trial court's ruling. *Gutierrez v. State*, 221 S.W.3d 680, 687 (Tex. Crim. App. 2007). The trial court is the exclusive factfinder and judge of the credibility of the witnesses. *State v. Ross*, 32 S.W.3d 853, 855 (Tex. Crim. App. 2000). We afford almost total deference to the trial court's determination of historical facts supported by the record, especially when the trial court's findings are based on an evaluation of credibility and demeanor. *Guzman v. State*, 955 S.W.2d 85, 89 (Tex. Crim. App. 1997). We review questions not turning on credibility and demeanor

de novo. *Id.* We uphold a trial court’s decision if it is correct under any theory of law applicable to the case. *Id.*

B. Coercion in procuring statement

Zeigler contends that the trial court should not have admitted the statement because doing so violated his rights under both the Federal Constitution and Article 38.22 of the Texas Code of Criminal Procedure. A statement is obtained in violation of a defendant’s constitutional rights if the statement is causally related to coercive government misconduct. *Colorado v. Connelly*, 479 U.S. 157, 164, 107 S. Ct. 515, 520 (1986). Under that standard, coercive government misconduct renders a confession involuntary if the defendant’s “will has been overborne and his capacity for self-determination critically impaired.” *Schneckloth v. Bustamonte*, 412 U.S. 218, 225, 93 S. Ct. 2041, 2047 (1973). This determination is made by considering the totality of the surrounding circumstances including the characteristics of the accused and the details of the interrogation. *Id.* at 226, 93 S. Ct. at 2047.

The Texas Code of Criminal Procedure provides similar protections, but with a structured, four-prong test to evaluate the circumstances. *See Martinez v. State*, 127 S.W.3d 792, 794 (Tex. Crim. App. 2004). In order for a statement to be inadmissible, there must be: (1) a promise of some

benefit to the accused; (2) that is positive; (3) made or sanctioned by someone in authority; and (4) that is of such an influential nature it would cause a defendant to speak untruthfully. *Id.* The question is not whether the statement is true, but whether the promise would likely lead to a false confession. *Id.*

C. Analysis

Zeigler complains that he was held in isolation in a rubberized “suicide watch” cell away from the general jail population, he did not receive his prescribed medication for anxiety and his heart after requesting it, and investigating officers made him promises that induced him to make his statement. He claims that the cumulative effect of these circumstances rendered his statement involuntary.¹ Pertinent to these contentions, the trial court made the following findings:

- Zeigler was assigned to a suicide prevention cell due to a previous suicide attempt the week before his arrest.
- Mid-day on November 24, 2007, Zeigler used the intercom in his cell to tell the deputy on duty that he wanted to talk to someone in criminal investigations because he had some information for them.
- About four hours later, two local officers and the FBI agent involved in the investigation interviewed Zeigler.

¹ Zeigler also claims that he was forced to sleep in his own urine, but the correctional officer that was on duty testified to the contrary, describing the cell’s arrangements for sleeping and using the facilities.

- Zeigler confirmed that he was at the interview voluntarily and that he requested the meeting.
- Zeigler was read his statutory rights and warnings and indicated that he understood his rights. He initialed and signed the waiver of rights form and agreed to talk to the police officers.
- Zeigler expressed his concerns about being on suicide watch, inability to make a phone call, and problems with medications.
- The police officers responded to these concerns by agreeing to help him make his telephone call and relay the remainder of the information to the jailers.

The trial court concluded that “[t]he promise of a phone call by police officers is not of such an influential nature that it would cause the Defendant to speak untruthfully,” and consequently, Zeigler freely and voluntarily waived his statutory rights. The record supports these findings and conclusions. We defer to the trial court’s decision to accord more weight and credibility to the officer’s testimony than to Zeigler’s. We hold that the court’s ruling admitting the statement lies within the zone of reasonable disagreement. *See Cantu*, 842 S.W.2d at 682.

Conclusion

We hold that the trial court did not err in instructing the jury on the law of parties, because the evidence supported submission of that instruction. We further hold that a rational jury could have found beyond a reasonable doubt that Zeigler had the intent to and caused capital murder.

Finally, we hold that the trial court did not err in denying Zeigler's motion to suppress his November 24th statement. We therefore affirm the judgment of the trial court.

Jane Bland
Justice

Panel consists of Chief Justice Radack and Justices Bland and Huddle.

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