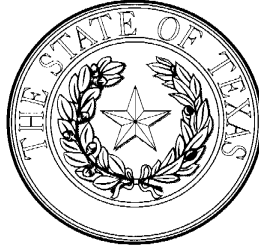


Opinion issued October 26, 2021.



In The  
**Court of Appeals**  
For The  
**First District of Texas**

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NO. 01-20-00194-CR

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**JOSHUA PIERCE SCHNIZER, Appellant**  
V.  
**THE STATE OF TEXAS, Appellee**

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**On Appeal from the 412th Judicial District Court**  
**Brazoria County, Texas**  
**Trial Court Case No. 87521-CR**

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**MEMORANDUM OPINION**

A jury convicted Joshua Pierce Schnizer of aggravated assault with a deadly weapon, namely a knife. TEX. PENAL CODE § 22.02(a)(2). He pleaded true to two enhancements, and the trial court sentenced him to 40 years' imprisonment. On appeal, Schnizer challenges the sufficiency of the evidence establishing that he used

or exhibited a knife as a deadly weapon and the sufficiency of the evidence establishing that he threatened the complainant with imminent bodily injury. He also contends that the trial court abused its discretion by allowing the State to introduce photographs and testimony regarding the death of the complainant. We affirm.

### **Background**

Schnizer was indicted for assault by threat with a deadly weapon, specifically, a knife. He pleaded not guilty and proceeded to trial before a jury. The jury heard that Schnizer met the complainant, Adam Arsenault, at a bar. Arsenault gave him money for drugs but did not receive any drugs from Schnizer. In the early morning of March 7, 2019, both men left the bar in a pickup truck driven by another bar patron, Muhammed Usman. While in route to Arsenault's hotel room, Arsenault opened the rear passenger door and jumped out of the truck while it was in motion. Arsenault landed on the highway. He was hit by two vehicles, and he died. At first, law enforcement investigated the death as a pedestrian and vehicle accident. In the three weeks after the death, law enforcement began to investigate why Arsenault had jumped from the truck. This investigation led to Schnizer's indictment.

At trial, a Good Samaritan testified that he was driving toward Houston when he saw a person lying on the highway. The person on the highway was later identified as Arsenault. The passerby testified that he turned his vehicle around, called law enforcement, and attempted to stop other cars from hitting Arsenault by

using his cell phone light. He witnessed a vehicle hit Arsenault. He also saw a white truck pull away from the scene.

Officer C. Mears with the Lake Jackson Police Department responded to the scene. The jury viewed his body camera footage. Officer Mears discovered Arsenault deceased on the road. The two cars that hit Arsenault remained at the scene. They were a grey Pontiac and a red Ford.

Officer N. Ross with the Lake Jackson Police Department responded to the scene around 2:00 a.m. for what appeared to be a vehicle and pedestrian collision. When Officer Ross arrived, he found Arsenault's mangled body. He determined that Arsenault had been struck by two vehicles, both of which remained at the scene. He testified that it was one of the worst vehicle and pedestrian accidents that he had ever seen.

Officer Ross noticed that the blood pattern on the road was different than he would expect to observe from similar pedestrian and vehicle collisions. Normally, a high velocity collision causes blood tissue to spray backward, but Officer Ross observed additional "low velocity" blood patterns on the highway. Based on the pattern, Officer Ross determined that Arsenault had been bleeding before he was struck by the first vehicle. During his testimony, the jury viewed photos of the blood on the ground, showing the blood patterns that led Officer Ross to believe that Arsenault was bleeding before the point of impact. Officer Ross testified that though

Arsenault was struck by two cars, the first impact was definitely fatal. Finally, Officer Ross testified that a knife can be a deadly weapon.

The Galveston County Medical Examiner's Office performed an external autopsy later in the morning. The medical examiner testified that though the accident occurred in Brazoria County, Brazoria County has a contract with Galveston County to conduct its autopsies. The examiner was told that the body was involved in a vehicle and pedestrian accident, and he was asked to perform an external autopsy. He testified that the cause of death was multiple blunt force injuries from a motor vehicle. He did not conduct an internal autopsy, and he testified that internal autopsies are more expensive.

During the medical examiner's testimony, the court admitted autopsy photos while the medical examiner testified about injuries he noted on Arsenault's body. Arsenault's leg was shattered, and his head was severely wounded. The medical examiner did not see bruising on Arsenault's face or anything indicative of being beaten about the face. He noticed bleeding abrasions on Arsenault's lower back. He concluded that Arsenault incurred the abrasions while alive. The medical examiner also noticed that Arsenault had been from his hands. While he did not assess these wounds to be defensive wounds at the time, the medical examiner testified that if someone came after a person with a knife, he might observe defensive wounds on the hands. Toxicology reports indicated that Arsenault was intoxicated at the time of

death, though his blood alcohol level could have risen in the elapsed time between death and sampling. Finally, the medical examiner testified that in a typical criminal case, he would retain the deceased's clothing. At the time of the autopsy, he was under the impression that the autopsy was the result of a tragic accident, not a criminal matter, so he did not retain Arsenault's clothing.

Yvonne Mintz testified that she was an editor and publisher of a local newspaper in Brazoria County. She had worked for the paper for 22 years. She recognized Schnizer in court and stated that he was a former employee of the paper. Mintz testified that sooner after the collision occurred, the newspaper published a front-page story about it. Shortly thereafter, Mintz received a call from Schnizer asking her if there was more information about the incident and if the police had any suspects. Mintz thought that Schnizer's inquiry about suspects was odd because the article did not mention foul play. Mintz told Schnizer that Arsenault's family had called her and told her that there was more to the story. Schnizer sounded concerned on the phone. Once she learned that Schnizer had been arrested, Mintz contacted the district attorney's office to inform the office about Schnizer's phone call. His arrest reminded her of their conversation.

Detective D. Lewis testified about his involvement with the case. He responded to the scene of the collision and also investigated in the weeks that followed. When he arrived at the scene, he spoke with the drivers of the cars that

had hit Arsenault. He learned that Arsenault had been alive prior to impact, crawling or lying on the roadway. Detective Lewis learned from Officer Ross that the blood patterns on the ground did not appear normal for a high velocity collision. Other than this anomaly, the scene appeared to be a tragic accident, not a criminal matter.

Detective Lewis later learned that, immediately before his death, Arsenault had sent an ex-girlfriend text messages that indicated that he was in distress. The text messages said that he might get shot and could not get out of a car, and that if his ex-girlfriend never heard from him again, she should know that he loved her. This changed the focus of the investigation.

After learning about the text messages, Detective Lewis called a number that had been on the lock-screen of Arsenault's phone. The number belonged to Arsenault's coworker, who had been with him earlier in the evening. The coworker told Detective Lewis that he and Arsenault spent the evening at a bar, drinking and playing pool. While they were there, Arsenault expressed that he wanted to find cocaine. Arsenault began talking to a man at the bar about finding cocaine. The coworker gave a physical description of the man to Detective Lewis and described the person as unfriendly. At one point, Arsenault pulled the coworker aside to tell him that the person was someone "not to be f[\*\*\*]ed with." When the bar closed, the coworker tried to get Arsenault to leave with him, but Arsenault refused. The coworker left without Arsenault.

Detective Lewis contacted the bar to see if there was any surveillance footage of the night. He received the video a week after the incident. In the video, Schnizer, matching the description given by Arsenault's coworker, is wearing an Astros sweatshirt and can be seen receiving money from Arsenault.

Detective Lewis learned the names of other individuals present that night from bar staff. One of those names was Kris Doughty. Detective Lewis interviewed Doughty at his home. Doughty told Detective Lewis that he met Arsenault for the first time that night and that Arsenault told him he was in town from Canada. Doughty gave Detective Lewis a description of Arsenault that matched his appearance. He told Detective Lewis that two other men spoke to Arsenault. Doughty's impression of those men was unfavorable. He described Schnizer as "sketchy." Schnizer told Doughty that he took Arsenault's money for drugs but did not intend to provide them to Arsenault.

Doughty testified at trial. During his testimony, the State published the surveillance video from the bar. Doughty identified Arsenault as the Canadian he had met at the bar and also identified Schnizer. During the course of the night, Doughty and a friend, Kenneth Grimes, went to a second bar. Doughty testified that he left when Arsenault and Schnizer arrived at the second bar. He had heard that Arsenault gave Schnizer \$100 and that Schnizer did not intend to give him drugs in

return. He thought it was strange that someone would rob another person for \$100. Grimes told Detective Lewis a similar story and also testified at trial.

Detective Lewis learned Muhammed Usman's name from bartenders. Usman was a regular at the bar and appeared in the surveillance video interacting with Schnizer. Detective Lewis found Usman's phone number and address and attempted to speak with him at his home. Usman did not answer. Detective Lewis left a message for Usman, and Usman called him back and came into the police department.

At the police department, Usman told Detective Lewis that both Schnizer and Arsenault had been in his vehicle once the bars closed. He stated that he intended to drive Arsenault to his hotel room. He insisted that he did not know either man before that night, and he told Detective Lewis that Arsenault had given Schnizer money for drugs. Usman told the detective that Schnizer and Arsenault had an argument while in his truck. He also told Detective Lewis a location where Schnizer and Arsenault got out of his truck, but that location was not where Arsenault's body was recovered. Detective Lewis suspected that Usman was withholding information.

Through his investigation, Detective Lewis learned that Schnizer worked at a home improvement store. He went to the store to interview Schnizer. Schnizer was not there, but he called Detective Lewis on March 26, 2019. The jury heard a recording of Detective Lewis's phone call with Schnizer. Over 90 seconds elapsed



before Schnizer asked Detective Lewis any questions, such as why he was calling or wanted to talk to him. Detective Lewis testified that this was unusual.

During the phone call, Schnizer told Detective Lewis that Arsenault was attacking Usman, who was driving the truck. At that point, Detective Lewis had talked to Usman on two occasions. On neither occasion did Usman tell the detective that he had been attacked. During the phone call, Schnizer did not mention that he had taken money from Arsenault for drugs, nor did he mention an altercation with Arsenault nor that he had defended himself against Arsenault. Schnizer told Detective Lewis that Arsenault and Usman had a fight and, inexplicably, Arsenault jumped out of the moving vehicle. Detective Lewis did not feel that Schnizer was being honest with him. He asked another detective to accompany him to Schnizer's workplace to speak with him again.

The jury heard a recording of the two detectives' interview with Schnizer at his workplace. In this interview, Schnizer told the detectives that he was attacked while in the truck. Schnizer reiterated several times that Arsenault fell out of the truck backwards. He also did not seem to know that Arsenault was dead. Schnizer stated that Arsenault jumped out of the vehicle in the same location that Usman told Detective Lewis that Arsenault got out of his truck. This location was not where Arsenault's body was found. Detective Lewis was suspicious because Usman and Schnizer both told him that they did not know each other, yet they both told him that

Arsenault got out of the truck at the same, incorrect location. He also became suspicious because Schnizer repeated several times, when pressed for more details, that he was in a blackout during the ride with Arsenault. He seemed to remember details that were favorable to him while being unable to remember other details.

As the interview progressed, Schnizer became emphatic that Arsenault had assaulted him. Schnizer also insisted that he never took his seatbelt off or left the front passenger seat. Detective Lewis testified that he found it implausible that a person would leave their seatbelt on and stay in their seat when being attacked from behind in a car. About twelve minutes into the interview, Schnizer told Detective Lewis that he pulled out a pocketknife to end the fight with Arsenault and surmised that the knife may have been the reason Arsenault jumped from the car. After Schnizer told the detective that he pulled out a pocketknife, he also told the detective that Arsenault put him in a chokehold.

Detective Lewis became concerned that Schnizer had left out several details in his initial conversation with him. He also became suspicious that Schnizer repeatedly insisted that Arsenault had attacked him. The details Schnizer shared led Detective Lewis to believe that Arsenault had been threatened when Schnizer pulled out a pocketknife and that he may have been scared when he jumped out of the car. Detective Lewis testified that a pocketknife can be a deadly weapon.

After speaking with Schnizer at his workplace, Detective Lewis had another conversation with Usman. Unlike Schnizer, Usman never told Detective Lewis that Schnizer either had a knife or yelled that he had a knife. Usman gave consent for the detective to look in his pickup truck, a white Toyota Tundra. Detective Lewis noticed dark stains in the rear seat behind the driver. Detective Lewis described the stains as hard to miss, though Usman indicated that he had not seen them. Detective Lewis also noticed a slash in the center console that could have been caused by a small knife. The jury viewed photographs of Usman's truck taken when Detective Lewis looked inside. Samples from the stains in the backseat were sent for forensic testing. Detective Lewis testified that at this point he had reason to believe that Schnizer had assaulted Arsenault. A grand jury issued an indictment, but it took some time to find Schnizer. Schnizer was eventually arrested in late May 2019.

After Schnizer was arrested, Detective Lewis spoke with Usman again at his house. He told Usman that Schnizer had been arrested. Usman then gave the detective Schnizer's watch, which Detective Lewis found strange. In this conversation, Detective Lewis also learned that after Arsenault jumped from the truck, Usman and Schnizer returned to Usman's residence to drink.

Detective Lewis conducted a search of Schnizer's girlfriend's house, where Schnizer lived. He recovered eleven knives that were admitted into evidence. He

also recovered the sweatshirt that Schnizer was wearing during the incident, some shoes, and his cell phone.

Usman testified pursuant to an immunity agreement. He said that he had met Schnizer one time, on the night of the incident. That night he was with Schnizer at two different bars. Usman drove Schnizer from one bar to the next. He testified that Arsenault overheard his conversation with Schnizer about drugs and started yelling, "Let's do drugs!" Usman attempted to quiet Arsenault. Usman saw Arsenault hand Schnizer money, but he did not know the amount. At the end of the night, he offered to drive Arsenault to his hotel and Schnizer to his home. He did not know where Schnizer lived and intended to find out after he dropped off Arsenault.

When the three men got in Usman's white four-door Toyota Tundra pickup, Arsenault sat behind Usman, and Schnizer sat in the front passenger seat. Arsenault began asking when he would get drugs, and Schnizer became upset. It was clear to Usman that Schnizer intended to steal Arsenault's money. Schnizer told Arsenault to shut up or he would beat him. Usman testified that the two men were "talking trash" to each other and that Schnizer told Arsenault to "shut the f[\*\*\*] up" or he would beat him. Arsenault tried to put Schnizer in a chokehold from the backseat. Usman testified that Schnizer freed himself from the chokehold, unbuckled his seatbelt, and leaned into the back seat over the center console. Schnizer's feet were hitting the front air conditioning vents. Schnizer began punching Arsenault. While

still driving, Usman was able to stop the fight by separating them, and Schnizer sat back in his seat. Schnizer told Arsenault not to come to the front of the car or he would beat him up. Arsenault began to cry. Usman told the two men that he was going to drop Arsenault at his hotel where they could sort out the dispute. Suddenly, Arsenault jumped out of the truck about a mile from the hotel. When he jumped out, the truck was traveling at about 40 or 45 miles per hour.

Usman testified that Arsenault threw himself out of the truck, and Usman was able to shut the back passenger door while driving. Usman contemplated stopping and walking back to Arsenault, but he decided it would take longer than driving to the next exit and turning around. Usman testified that Schnizer was unconcerned about Arsenault and suggested that they go home. By the time they drove back around, law enforcement had responded to the scene. Usman did not stop and did not call 911. Instead, he testified that he moved on with his life. Schnizer came home with him and had a few beers. Schnizer continued to suggest that they forget about it as they watched television and drank. After about an hour, Usman drove Schnizer to a friend's house in Lake Jackson. Usman heard Schnizer tell the friend that he punched someone, and Usman told the friend that that person jumped out of his truck. He also testified that he saw Schnizer by happenstance the next day at a convenience store but did not interact with him.

Usman did not remember telling law enforcement that they tried to find drugs. Usman admitted that he had lied the first time that law enforcement talked to him. He told Detective Lewis that he had kicked Schnizer and Arsenault out of his truck in Freeport when they started fighting. He also told law enforcement that at the end of the night he dropped Schnizer off at a convenience store, but he actually took him to a friend's house. He testified that he never heard Schnizer say that he had a knife, and he could not remember if Schnizer had one. Usman testified that he did not see any stains in the back of his truck until Detective Lewis discovered them later in the month. He testified that he had not cleaned his truck before the detective searched it.

Sergeant Hawkins, a detective with the Lake Jackson Police Department testified that he accompanied Detective Lewis for the in-person interview with Schnizer and to Usman's house when they looked in Usman's truck. His impression was that Schnizer's story did not make sense. Sergeant Hawkins tested Schnizer's sweatshirt that was recovered from his girlfriend's house for blood. He did not find any evidence of blood on the sweatshirt, but it had been months since the incident. He also used technology that looks for blood remnants on some of the knives found in the house. He did not find any blood on them. Sergeant Hawkins testified that when searching the house, he noticed the newspaper story of the incident was in

Schnizer's bedroom. Sergeant Hawkins also seized Schnizer's cell phone and noted that all text messages from March until May had been deleted.

A forensic scientist testified that she tested blood samples taken from the back of the pickup. The DNA in the blood samples came from a single individual and the likely probability was that the blood came from Arsenault.\*

Carrie Sullivan, Schnizer's girlfriend, testified that on March 6, 2019, she saw a white truck leave her driveway and discovered that Schnizer was no longer in her house. She suspected that he snuck out of the house to drink because she does not allow drinking in her house. She did not see him for three days. Schnizer's mother lived with them, and they both tried calling him, but heard nothing. It was as if he disappeared. Days later, she saw him coming across the yard. She was furious and did not want to talk to him. She saw scratches on his neck and ear. She was not concerned by the scratches because sometimes Schnizer disappeared into the woods near the house. In the weeks that followed, Schnizer asked Sullivan for nicer shirts to wear to work because someone was coming to talk to him there. She believed it was for a promotion.

During Sullivan's testimony, the State established a timeline of Schnizer's whereabouts in the weeks after the incident. On March 11, 2019, four days after the

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\* While the forensic scientist could not say certainly that the blood came from Arsenault, she stated that the blood was 1.36 septillion times more likely to be his than anyone else's.

altercation with Arsenault, he went to the emergency room complaining of alcohol withdrawal and lower back pain. He did not complain of any injuries related to an altercation with Arsenault. On March 15, 2019, a week after the altercation with Arsenault, Schnizer posted on his Facebook page encouraging his followers not to take life for granted because “those who died yesterday had plans for this morning and those who died this morning had plans for tonight.” On March 22, 2019, Sullivan and Schnizer got a dog and took an anniversary trip to the beach.

The jury heard several recorded phone calls between Sullivan and Schnizer that occurred after Schnizer was arrested in May 2019. During the calls, Schnizer assured Sullivan that a dead person could not testify, and that the State could not use his testimony or Usman’s testimony because they had both been drinking. He told Sullivan that he would hope to be sentenced to probation, and if not, that he would be in prison for three years. He figured he could obtain parole quickly. He also told her that he could “pull the rehab card” to bond out of jail. He asked that her young children write letters to help his efforts. Schnizer told Sullivan that he needed to stop drinking or this situation would happen again.

Sullivan testified that when police searched her house, they found Schnizer’s cell phone. She asked him for the password and gave it to law enforcement. When Schnizer learned of this, he became incensed with her. The jury also heard a phone call between Schnizer and Sullivan where Sullivan lamented that she felt guilty that



he may have used a knife she had given him during the altercation with Arsenault. Schnizer responded that she should not talk about it. Sullivan testified that she felt guilty because the only knife she knew he possessed was one that she had given him for Christmas.

After the State rested, the defense immediately rested. After deliberations, the jury found Schnizer guilty of aggravated assault with a deadly weapon, namely a knife. Schnizer pleaded true to two enhancements, and the trial court sentenced him to 40 years' imprisonment.

### **Sufficiency of the Evidence**

In his first issue, Schnizer challenges the sufficiency of the evidence that he used or exhibited a knife as a deadly weapon. He also challenges the sufficiency of the evidence that he threatened the complainant with imminent bodily injury. We disagree.

#### **A. Standard of Review and Applicable Law**

In assessing the sufficiency of the evidence, we consider all of the evidence in the light most favorable to the verdict and determine whether, based on that evidence and reasonable inferences therefrom, a rational trier of fact could have found the challenged element or elements of the crime beyond a reasonable doubt. *Jackson v. Virginia*, 443 U.S. 307, 318–19 (1979); *Whatley v. State*, 445 S.W.3d 159, 166 (Tex. Crim. App. 2014). In reviewing historical facts that support

conflicting inferences, we presume that the jury resolved any conflicts in the State's favor and defer to that resolution. *Whatley*, 445 S.W.3d at 166. We do not sit as a thirteenth juror and may not substitute our judgment for that of the factfinder by reevaluating the weight and credibility of the evidence. *Isassi v. State*, 330 S.W.3d 633, 638 (Tex. Crim. App. 2010). As judge of the credibility of the witnesses, a jury may choose to believe all, some, or none of the testimony presented. *Davis v. State*, 177 S.W.3d 355, 358 (Tex. App.—Houston [1st Dist.] 2005, no pet.).

Circumstantial evidence is as probative as direct evidence and can be sufficient on its own to establish guilt. *Hooper v. State*, 214 S.W.3d 9, 13 (Tex. Crim. App. 2007). “In circumstantial evidence cases, it is not necessary that every fact and circumstance ‘point directly and independently to the defendant’s guilt; it is enough if the conclusion is warranted by the combined and cumulative force of all the incriminating circumstances.’” *Temple v. State*, 390 S.W.3d 341, 359–60 (Tex. Crim. App. 2013) (quoting *Johnson v. State*, 871 S.W.2d 183, 186 (Tex. Crim. App. 1993)).

## **B. Analysis**

The jury heard sufficient evidence to decide that Schnizer intentionally or knowingly threatened Arsenault with imminent bodily harm while using or exhibiting a knife as a deadly weapon. To obtain a conviction for aggravated assault with a deadly weapon, the State was required to establish that Schnizer intentionally

or knowingly threatened Arsenault with imminent bodily injury while using or exhibiting a deadly weapon, namely a knife. *See* TEX. PENAL CODE § 22.02(a)(2).

Intent may be inferred from circumstantial evidence, including, acts, words, and conduct. *Jones v. State*, 500 S.W.3d 106, 113 (Tex. App.—Houston [1st Dist.] 2016, no pet.). There must be some evidence of a threat to sustain a conviction for assault by threat. *See Olivas v. State*, 203 S.W.3d 341, 349 (Tex. Crim. App. 2006).

The Penal Code defines “deadly weapon” to include “anything that in the manner of its use or intended use is capable of causing death or serious bodily injury.” TEX. PENAL CODE § 1.07(a)(17)(B). The State must show only that the use or intended use of an object is capable of causing death or serious bodily injury. *See Tucker v. State*, 274 S.W.3d 688, 691–692 (Tex. Crim. App. 2008); *McCain v. State*, 22 S.W.3d 497, 503 (Tex. Crim. App. 2000) (“[A]n object is a deadly weapon if the actor intends a use of the object in which it would be capable of causing death or serious bodily injury.”).

The State need not introduce the weapon into evidence. *Banargent v. State*, 228 S.W.3d 393, 399 (Tex. App.—Houston [14th Dist.] 2007, pet. ref’d). Instead, either expert or lay testimony may suffice to support a deadly weapon finding. *Id.* Objects used to threaten deadly force are deadly weapons. *McCain*, 22 S.W.3d at 503. A defendant does not have to injure a complainant with a knife for it to be a deadly weapon. *See Johnson v. State*, 509 S.W.3d 320, 323 (Tex. Crim. App. 2017).

It is for the jury to determine whether an individual used a knife as a deadly weapon by weighing the evidence before it on a case-by-case basis and using that evidence to draw reasonable inferences. *Isassi*, 330 S.W.3d at 638. In determining whether an object qualifies as a deadly weapon, the factfinder may “consider words and other threatening actions by the defendant, including the defendant’s proximity to the victim; the weapon’s ability to inflict serious bodily injury or death, including the size, shape and sharpness of the weapon; and the manner in which the defendant used the weapon.” *Johnson*, 509 S.W.3d at 323. Some factors that may be considered in determining whether a particular knife qualifies as a deadly weapon are (1) the size, shape, and sharpness of the knife; (2) the manner in which appellant used the weapon; (3) the nature of any inflicted wounds; (4) any testimony concerning the knife’s life-threatening capabilities; and (5) appellant’s statements. *Banargent*, 228 S.W.3d at 398; *see also Brown v. State*, 716 S.W.2d 939, 946 (Tex. Crim. App. 1986) (listing as relevant factors defendant’s express and implied threats, distance between defendant and victim, and victim’s description of knife).

Evidence is sufficient if a knife is displayed in a manner conveying an express or implied threat that serious bodily injury or death will be inflicted if the desire of the person displaying the knife is not satisfied. *Billey v. State*, 895 S.W.2d 417, 422 (Tex. App.—Amarillo 1995, pet. ref’d); *see also Martinez v. State*, No. 01-07-01070-CR, 2008 WL 5263611, at \*3 (Tex. App.—Houston [1st Dist.] Dec. 18, 2008,

no pet.) (mem. op., not designated for publication) (quoting *Billey*). By producing the knife and exhibiting its blade, even partially, a defendant can achieve his desired effect of placing a person in fear of death or serious bodily injury. *See Billey*, 895 S.W.2d at 422–23.

The trial testimony included a recording of Schnizer’s interview with Detective Lewis and Detective Hawkins. During the interview, Schnizer admitted that he took out a pocketknife and told Arsenault to stay in the backseat of the pickup truck and “chill . . . out” or he would use the knife. *See Billey*, 895 S.W.2d at 422. At the time, Schnizer and Arsenault were in close proximity to one another. Schnizer was in the front passenger seat of the truck, and Arsenault was in the backseat behind the driver. Schnizer claimed that he was defending himself and that he did not cut or stab Arsenault. He stated that he used the pocketknife to “make the point clear that the fight was over.” The jury could infer from Schnizer’s words and actions that his intent was to threaten Arsenault. *See Jones*, 500 S.W.3d at 113. After Schnizer pulled out the knife, Arsenault jumped out of the moving truck. Schnizer told the detectives that when Arsenault “bailed out” of the truck, it was moving at 40 to 45 miles per hour.

The jury heard Detective Lewis’s testimony that at first Schnizer did not tell Detective Lewis that he had a knife during the altercation. Only after Detective Lewis told Schnizer that his version of what had happened did not align with the

evidence collected did Schnizer admit that he brandished a knife. When he admitted that he brandished a knife, he claimed that he did so in self-defense. Detective Lewis testified that a small knife could be a deadly weapon and that after he learned from Schnizer that Schnizer had displayed a pocketknife, he realized that Arsenault may have jumped from the car because he was afraid. Law enforcement discovered text messages from Arsenault to his ex-girlfriend that indicated that while riding in the car with Schnizer and Usman, Arsenault was in fear for his life.

Physical evidence at the scene and in Usman's truck suggested that the knife had been used as a deadly weapon. Officer Ross testified that he found "gravity fed" blood droplets on the highway. This blood was different than the blood pattern typically associated with a high-speed pedestrian and vehicle crash. Officer Ross concluded that Arsenault had been bleeding before he was struck by two vehicles. Officer Ross also opined that a knife could be a deadly weapon, capable of causing serious bodily injury.

Arsenault's blood was found in Usman's truck. The jury heard testimony regarding DNA evidence from samples of blood found in the backseat of Usman's truck. Arsenault was sitting in the backseat behind the driver, in the same spot where the blood that matched his DNA was found. Finally, the medical examiner stated that Arsenault was bleeding from his hands. He testified that Arsenault had bleeding abrasions on his lower back and that the abrasions occurred while he was alive.

Schnizer argues that the evidence is insufficient because the State did not introduce a specific knife used in the incident. The State introduced 11 knives into evidence, all of which were found in Schnizer's home. While none of them had blood on them, the knives were seized months after the incident. During a phone call to Schnizer in jail, Schnizer's girlfriend lamented that she felt guilty that he may have used a knife she gave him during the altercation. Schnizer responded that she should not talk about it. Schnizer's girlfriend testified that she felt guilty because the only knife she knew he possessed was one that she had given him for Christmas.

While the jury heard Usman's testimony that he never saw a knife, Usman testified that once they were in the car leaving the bars, Schnizer threatened Arsenault several times, including threatening to kill him. The jury could hear the testimony of all witnesses and weigh their credibility, choosing to credit all, part, or none of any witness's testimony. *See Davis*, 177 S.W.3d at 358.

Finally, the jury heard that Usman and Schnizer continued driving after Arsenault jumped from the vehicle. Usman testified that they returned to the scene but did not stop or call 911. He also testified that Schnizer was unfazed after Arsenault jumped out and suggested they continue on. While flight alone does not support a guilty verdict, evidence of flight from a crime scene is a circumstance from which an inference of guilt may be drawn. *Sosa v. State*, 177 S.W.3d 227, 230 (Tex.

App.—Houston [1st Dist.] 2005, no pet.) (citing *Valdez v. State*, 623 S.W.2d 317, 321 (Tex. Crim. App. 1979)).

When presented with circumstantial evidence, we must consider “the logical force of the combined pieces of circumstantial evidence in the case, coupled with reasonable inferences from [the circumstantial evidence.]” *Evans v. State*, 202 S.W.3d 158, 166 (Tex. Crim. App. 2006). Based on Schnizer’s admissions, the physical evidence at the scene and in Usman’s truck, and expert testimony at trial, a rational juror could have reasonably determined that Schnizer threatened Arsenault with a deadly weapon.

Considering all of the evidence in the light most favorable to the verdict, we conclude that a rational trier of fact could have concluded that Schnizer used a deadly weapon, namely a knife, while threatening Arsenault with imminent bodily injury. *See* TEX. PENAL CODE § 22.02(a)(2); *Whatley*, 455 S.W.3d at 166. We overrule Schnizer’s first issue.

### **Admission of Evidence**

In his second issue, Schnizer argues that the court erroneously admitted evidence related to Arsenault’s death, including testimony, videos, and photographs of the scene of Arsenault’s death and of his autopsy, because the evidence was substantially more prejudicial than probative. We disagree.



### **A. Standard of Review**

We review a trial court's rulings on the admissibility of evidence for abuse of discretion. *Coble v. State*, 330 S.W.3d 253, 272 (Tex. Crim. App. 2010). A trial court abuses its discretion when its ruling is arbitrary or unreasonable. *State v. Mechler*, 153 S.W.3d 435, 439 (Tex. Crim. App. 2005). A trial court does not abuse its discretion if its decision is within "the zone of reasonable disagreement." *Bigon v. State*, 252 S.W.3d 360, 367 (Tex. Crim. App. 2008).

### **B. Preservation of Error**

On appeal, Schnizer argues that any testimony related to Arsenault's death was erroneously admitted. Preliminarily, we note that Schnizer has not preserved his complaint related to the admission of testimony about Arsenault's death because he failed to object when the testimony was offered at trial.

Schnizer filed a motion in limine related to photographs and videos of the scene of Arsenault's death and of his autopsy. During argument on the motion, he orally raised an objection to the general relevance of the death and autopsy. The court denied Schnizer's motion in limine. Schnizer renewed his objections to the photographs and body camera video when these pieces of evidence were offered during trial testimony, claiming that the evidence should be excluded under Texas Rule of Evidence 403. The court admitted the evidence over his objection. Schnizer

did not object when witnesses testified at trial about the scene or circumstances of Arsenault's death.

A motion in limine is “a method of raising [an] objection to an area of inquiry prior to the matter reaching the ears of the jury through a posed question, jury argument, or other means.” *Thierry v. State*, 288 S.W.3d 80, 86 (Tex. App.—Houston [1st Dist.] 2009, pet. ref'd) (quoting *Norman v. State*, 525 S.W.2d 669, 671 (Tex. Crim. App. 1975)). A ruling sustaining a motion in limine is not a ruling that excludes evidence, but instead it requires the parties to approach the trial court for a definitive ruling before attempting to put on evidence within the scope of the motion in limine order. *Id.* “It is axiomatic that motions in limine do not preserve error.” *Id.* at 87 (quoting *Hartnett v. State*, 38 S.W.3d 650, 655 (Tex. App.—Austin 2000, pet. ref'd)). In order to preserve error for appeal, a complaining party must not only object, but he must obtain an adverse ruling on the record or object to the trial court's refusal to rule on the objection. TEX. R. APP. P. 33.1(a).

Schnizer did not preserve his complaint related to the relevance of testimony, generally, about Arsenault's death. *See Thierry*, 288 S.W.3d at 86. While he objected when the photographs and video were offered into evidence, he did not object when witnesses testified about the death and scene generally. Accordingly, he did not preserve his complaint that testimony about Arsenault's death was erroneously admitted. *See* TEX. R. APP. P. 33.1(a).

### C. Admissibility of Photographs and Video

Schnizer preserved his complaint about the admission of the photographs and video of the scene and autopsy. He alleges that the trial court abused its discretion in admitting these pieces of evidence because their probative value was substantially outweighed by the danger of unfair prejudice. *See* TEX. R. EVID. 403.

Evidence is relevant if it tends to make a fact more or less probable than it would be without the evidence and the fact is of consequence in determining the action. *See* TEX. R. EVID. 401. Rule 403 permits the exclusion of otherwise relevant evidence when its probative value is substantially outweighed by the danger of unfair prejudice. TEX. R. EVID. 403. Rule 403 favors the admission of relevant evidence, and it carries the presumption that relevant evidence will be more probative than prejudicial. *Davis v. State*, 329 S.W.3d 798, 806 (Tex. Crim. App. 2010). Further, Rule 403 does not require exclusion of evidence because it creates prejudice; rather, it must be shown that the prejudice is “unfair.” *Martinez v. State*, 327 S.W.3d 727, 737 (Tex. Crim. App. 2010); *Mechler*, 153 S.W.3d at 440. Rule 403 contemplates the exclusion of evidence only when a clear disparity exists between the degree of prejudice of the offered evidence and its probative value. *Davis*, 329 S.W.3d at 806; *Paz v. State*, 548 S.W.3d 778, 795 (Tex. App.—Houston [1st Dist.] 2018, pet. ref’d) (op. on reh’g).

When determining the admissibility of photographs under rule 403, we consider the following factors: “the number of exhibits offered, their gruesomeness, their detail, their size, whether they are in color or black-and-white, whether they are close-up, whether the body depicted is clothed or naked, the availability of other means of proof, and other circumstances unique to the individual case.” *Williams v. State*, 301 S.W.3d 675, 690 (Tex. Crim. App. 2009). Autopsy photographs are generally admissible unless they depict mutilation of the victim caused by the autopsy itself. *Id.*

### **1. Photographs and Video of Scene of Death**

Schnizer first complains about the admission of photographs and a body camera video from the scene of Arsenault’s death. The State introduced a body camera video from a responding officer and eight photographs of the scene of Arsenault’s death after he was struck by two vehicles. Only one of the eight photographs focused on his body. The other seven photographs showed the pattern of blood droplets on the road.

The evidence was relevant to the issue of whether Arsenault suffered wounds prior to leaving Usman’s truck and to the jury’s determination that a knife had been utilized as a deadly weapon to inflict the wounds. The photographs focused on the pattern of blood droplets on the ground. They showed that the pattern did not match a pattern typically seen with a high-impact collision between a person and vehicles.

The responding officer testified that the pattern indicated to him that Arsenault had been bleeding prior to being hit by the vehicles. The fact that Arsenault had been bleeding before he was run over is relevant to the jury's understanding of why he may have jumped out of a moving car. It is also relevant to the jury's decision whether Arsenault had been threatened and specifically whether he had been threatened with a deadly weapon by Schnizer. While the photographs of his body are gruesome, they were not offered solely to inflame the jury. *Erazo v. State*, 144 S.W.3d 487, 489 (Tex. Crim. App. 2004) (“If a photograph is competent, material, and relevant to the issue on trial, it is not rendered inadmissible merely because it is gruesome or might tend to arouse the passions of the jury, unless it is offered solely to inflame the minds of the jury.”).

The photographs also assisted the jury in understanding what had transpired to lead to the discovery of Arsenault's body in the highway and how law enforcement connected that discovery to Schnizer. “It is well-settled that where one offense or transaction is one continuous episode or another offense or transaction is a part of the case on trial or blended or closely interwoven with it, proof of all the facts is proper.” *Flores v. State*, 536 S.W.3d 560, 578 (Tex. App.—San Antonio 2017, pet. ref'd) (quoting *Cunningham v. State*, 982 S.W.2d 513, 521 (Tex. App.—San Antonio 1998, pet. ref'd)); *see also Camacho v. State*, 864 S.W.2d 524, 532 (Tex. Crim. App. 1993) (holding that same transaction contextual evidence is

admissible for the purpose of “illuminat[ing] the nature of the crime alleged”). The evidence depicting the scene of Arsenault’s death was admissible for this purpose. It was relevant to the jury’s understanding of why Arsenault was unavailable to testify and how law enforcement investigated the circumstances of his death. The evidence helped the jury understand that it took time for law enforcement to establish the connection between Arsenault and Schnizer. The fact that the investigation started as an accident explained why time had elapsed before Schnizer’s arrest. It also assisted the jury’s understanding related to evidence preservation, such as why blood was not found on knives or Schnizer’s sweatshirt.

Schnizer argues that the jury would be confused into convicting him of an unindicted offense, but the trial testimony was clear that Schnizer was not driving the two vehicles that hit Arsenault. The trial court did not abuse its discretion in admitting the photographs and video.

## **2. Autopsy Photographs**

The trial court admitted four photographs of Arsenault’s autopsy over Schnizer’s objection. The medical examiner testified that he only performed an external autopsy, rather than an internal autopsy. The photographs show the state of Arsenault’s body when he performed the external examination. Some of the photographs show that Arsenault was bleeding from his hands and lower back. One photograph shows his face and a severe head wound.

The trial court did not abuse its discretion in admitting the photographs. The photographs are gruesome, especially the photograph of Arsenault's head, but the photographs are also relevant. They help the jury decide whether Schnizer used the knife as a deadly weapon, by showing that Arsenault was bleeding from his hands and back. The medical examiner was unable to state what caused the wounds and stated that they could have been defensive injuries. They also show the severity of Arsenault's injuries and how those injuries may have obscured the medical examiner's ability to document external knife injuries. The photographs were circumstantial evidence that supported Officer Ross's conclusion that Arsenault was bleeding before the vehicle collisions. In turn, they were evidence to support that Schnizer had threatened Arsenault with a knife. The photographs were relevant to explaining what had happened to Arsenault in the truck and why he jumped out of the truck. The photographs were relevant, and their probative value was high. This value was not substantially outweighed by a danger of unfair prejudice.

Though the photograph of Arsenault's head was particularly gruesome, and a closer call for admission, the photograph was not substantially more prejudicial than probative, and the trial court did not abuse its discretion in admitting it. The probative value of this particular photograph was high. The jury heard testimony from Usman that Schnizer had punched Arsenault, and the photograph is relevant to the jury's determination of whether that had happened. There is little other evidence

that could support or refute Usman's testimony. The photograph does not show any bruising to that area of Arsenault's body. The photograph was therefore particularly useful in the jury's credibility assessments of witnesses and their accounts of what occurred the night that Arsenault died. The photograph also was helpful to the jury in evaluating Schnizer's self-defense claim. It was relevant to the jury's credibility decision related to whether the two men were fighting and how. Though the photograph was gruesome, it was particularly relevant. This high degree of relevancy was not substantially outweighed by the danger of unfair prejudice.

In total, the State admitted twelve photographs from the scene or the autopsy. The photographs were relevant to the jury's ultimate question of whether Schnizer threatened Arsenault with a deadly weapon. It is unlikely that the jury would attribute the injuries from the vehicle collision to Schnizer. *See Gallo v. State*, 239 S.W.3d 757, 763 (Tex. Crim. App. 2007) (stating court did not err in admitting gruesome autopsy photographs because no danger that jury would attribute to appellant removal of certain bones for autopsy). The trial testimony was clear that Schnizer was not a driver of the vehicles that hit Arsenault. Schnizer has not demonstrated that the trial court abused its discretion by admitting the photographs and video. We overrule Schnizer's second issue.



## **Conclusion**

We affirm the judgment of the trial court.

Peter Kelly  
Justice

Panel consists of Justices Kelly, Guerra, and Farris.

Do not publish. TEX. R. APP. P. 47.2(b).