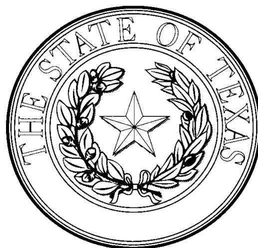
Opinion issued June 30, 2022



In The

Court of Appeals

For The

First District of Texas

NO. 01-21-00129-CR

BRANDON TYRONE GARRETT, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the 412th District Court
Brazoria County, Texas
Trial Court Case No. 87685-CR

MEMORANDUM OPINION

A jury convicted appellant, Brandon Tyrone Garrett, of murder.[1] After appellant pleaded true to two enhancement paragraphs, the trial court assessed his

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[1] *See* TEX. PENAL CODE § 19.02(b), (c).

punishment at life imprisonment and a $10,000.00 fine.[2] In several issues, appellant contends that the trial court erred in denying his motion to suppress (1) an investigative video on which the officers did not identify themselves, (2) investigative videos that contained references to extraneous offenses, (3) body camera videos that were the result of custodial interrogation without the benefit of statutory warnings, and (4) evidence obtained by a search of the crime scene before a warrant was obtained. We affirm.

BACKGROUND

On the morning of May 1, 2019, Jesika Taylor-Sullivan was drowned and strangled in the bathroom of her apartment. Appellant, who was married to Jesika, was arrested, charged, and convicted of her murder.

Events Before the Murder

On April 28, 2019, Jesika's sister, Jakquelyn Taylor-Sullivan, received a call from Jesika. Jesika was crying and said that she and appellant had gotten into a fight, and she thought that he was going to kill her. Jesika told her sister that appellant broke down her apartment door after being locked out and that he strangled her. Jesika went to a hospital after Jakquelyn encouraged her to go.

After she went to a hospital, Jesika returned home on April 29. Jakquelyn and Jesika texted each other throughout the day, but the conversation stopped when

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[2] *See* TEX. PENAL CODE §§ 12.32, 12.42(c).

Jesika said that she was going to take a nap. There was no further conversation between the sisters until Jesika suddenly texted Jakquelyn saying that appellant was at her apartment again and appeared to have a weapon. Jakquelyn responded and grew increasingly concerned as her text messages seemingly stopped and her phone calls went unanswered. Jakquelyn contacted the Alvin Police Department and requested a wellness check but Jakquelyn's texts soon resumed. Jesika told her sister that she had stopped responding because she was on the phone with the police at the same time.

The police did a welfare check and spoke to Jesika at her apartment. She told the police that the day before appellant had broken the door, entered the apartment, and choked her. After the police offered to help her obtain a restraining order against appellant, Jesika said she would think about it. She left the apartment to go stay with her mother but returned to her apartment sometime after that.

During the two days after this incident, Jakquelyn and Jesika talked about the possibility of having Jesika and appellant's marriage annulled. Jakquelyn testified that Jesika wanted to move forward from the incident and was considering potentially relocating. Jesika did not give her sister any indication that she was planning to commit suicide or to otherwise harm herself.

While he and Jesika were fighting, appellant stayed with Joy Boleigha, a colleague, at her apartment in North Houston. Appellant spent the night on

Monday, April 29, and left on Tuesday the 30th, when he told Boleigha that he was going home. As explained below, he returned to Boleigha's apartment during the early morning hours of May 1.

Day of the Murder

Around midnight on May 1, the neighbor who lived in the apartment directly below Jesika's heard loud noises. She thought the noise sounded like pounding or furniture being dropped, and she heard the noise twice. At approximately the same time, the neighbor who shared a common wall with Jesika felt a "series of concussions" reverberate through his apartment. Each series lasted for 30 seconds or less, and he could not tell where the reverberations were coming from. Neither neighbor called the police.

Around 3:00 a.m., appellant unexpectedly returned to Boleigha's apartment. Appellant told Boleigha that he was going to check into a hospital for mental health reasons and that he had gone home to pack a bag for the hospital. Boleigha learned that night that appellant was married. She had not known before. When asked why he did not stay at home with his wife, appellant said that they were having problems and his wife would not talk to him.

Appellant began trying to reach Jesika by text at 3:09 a.m. Detective J. Jackson testified that he believed appellant knew Jesika was deceased at this time and was trying to establish an alibi. At 6:15 a.m., appellant texted Jesika's mother,

Joyce Taylor, stating that he was going to the mental hospital. He also said that Jesika was not answering her phone, and he asked Taylor to try and contact Jesika.

Later that morning, appellant called Delea Wilson, the receptionist of the elementary school Jesika's daughters attended. He asked whether his daughters were at school, saying that if they were, he would know that Jesika was okay. Appellant told Wilson that Jesika had FaceTimed him the night before, that they had been arguing, and that Jesika had thought about suicide in the past. Finding the conversation strange, Wilson tried to contact Jesika several times unsuccessfully.

Noel Chau, the general manager of an Olive Garden restaurant, noticed that Jesika did not show up for her 9:00 a.m. shift. Jesika had called in sick the day before. Chau called Jesika to see if she was still sick, but he could not reach her. Appellant called the restaurant three times that morning, asking whether Jesika was at work and if Chau had heard from her. Chau believed that something "felt wrong about the situation" because Jesika always informed him if she was not coming in to work, but he had not heard from her.

Taylor, Jesika's mother, called the Alvin Police Department and requested another welfare check for Jesika after the school contacted her about her granddaughters' absence. Taylor was concerned because her granddaughters had never missed a day of school and because of the April 28 altercation between

appellant and Jesika. Officers Santucci and Erlewien received the call around 9:00 a.m. and responded to the concern.

As they approached Jesika's apartment, the officers noticed that the door frame appeared to have forced entry. The door may have been broken during the April 28 altercation. Jesika's two young daughters answered the door when the officers knocked. The daughters told the officers that their mother was asleep. Jesika never came to the door. The officers entered the apartment because they were concerned about the damage to the door and the welfare of the children. After entering, the officers knocked on the bedroom door and announced themselves. Again, Jesika did not answer. The officers unlocked the bedroom door and entered because of the lack of response.

Jesika's body was discovered in the bathroom attached to the bedroom. She was leaned over the half-full bathtub with her arms and face submerged. There was blood and a cell phone in the water. The officers pulled Jesika out of the water to see if any lifesaving procedures could be performed, but she was deceased. The officers contacted a supervisor by radio, and an investigator was dispatched. Neither officer collected any evidence while waiting for the detectives to arrive.

In the late afternoon, appellant called Boleigha and told her that his wife had passed. Appellant told Boleigha that the police were going to try to talk to him and asked her to give him an alibi for Monday and Tuesday night. Later that evening,

appellant was interviewed by Detectives Jackson and Kelly. Appellant was read his *Miranda* warnings and the interview was recorded. The interview was almost two hours long. In the interview, appellant repeatedly denied being in Alvin and said that he was staying with someone in Houston. Appellant also tried to present a possible suspect. After the interview, appellant agreed to and participated in a crime scene walkthrough with police officers, which was recorded on the officers' body cams.

Events After the Murder Investigation

On May 2, Texas Ranger T. Norsworthy was called in to assist with the homicide investigation. Norsworthy found evidence that appellant's license plate and a device registered to appellant with Google were depicted near Jesika's apartment in Alvin during the evening of April 30. In the hours before the murder took place, appellant's phone stopped sending data to Google. The phone started sending data again around 45 or 50 miles away from Jesika's apartment. The information collected contradicted appellant's previous statements to the officers.

Dr. Erin Barnhart, a medical examiner, conducted an autopsy. She found trauma to Jesika's left upper arm and pressure marks on her abdomen. Bruising on the arms and legs and contusions within the tongue were also found. Several petechial hemorrhages, indicative of a lack of oxygen, were present. Hemorrhages in several muscles of the neck and a fracture of the lateral aspect of the thyroid

cartilage were also found. Dr. Barnhart testified that the thyroid cartilage is a spot that is not usually injured, but that such an injury could result from strangulation. Dr. Barnhart was unable to segregate injuries Jesika may have suffered on the 28th from injuries Jesika suffered at her death. Dr. Barnhart found that the manner of death was homicide, and ruled that drowning was the primary cause of death, with a contributory cause of strangulation asphyxia.

At 3:08 p.m., two different detectives, Taylor and White, interviewed appellant at the Alvin Police Department for a second time. Appellant indicated that he understood the rights read to him, waived them, and agreed to talk to the detectives. The three-hour statement was played at trial. Initially, appellant told the detectives that he blacked out on Sunday while choking Jesika and claimed he was not aware of his actions. Appellant eventually admitted that he was in a fit of rage when he choked Jesika and was not blacked out. He said that Jesika provoked him, and that he accepted responsibility for his actions.

After being shown the findings from the license-plate reader, appellant admitted having gone to Alvin. Appellant initially denied being at the apartment, but then said that Jesika had asked him to kill her. Appellant claimed that the initial choking was accidental and that Jesika fell into the bathtub after the accidental choking. Appellant first said that Jesika asked him to kill her because she couldn’t live without him, but he later changed the story to Jesika having said that he should

kill her because he had already started it and he might as well finish it. At that point, appellant said that rage took over. He told the detectives that Jesika's eyes bugged out as he choked her, meaning that he was initially facing her. After he choked Jesika, appellant turned her around and she fell face-first into the bathtub. Jesika was bleeding from her nose and there was blood on the side of the bathtub and on the floor.

DENIAL OF MOTION TO SUPPRESS

In four issues, appellant contends the trial court erred in denying his motion to suppress evidence. Specifically, he contends that the trial court should have suppressed (1) his first interview because all the voices on it had not been identified, (2) all evidence of the extraneous-offense assault that occurred on April 28th, (3) the video taken by Detective Taylor's body cam when he walked through the crime scene with appellant, and (4) all evidence recovered from the crime scene between the time the body was discovered and the time the warrant was obtained.[3] We address each issue, respectively.

Standard of Review

A trial court's ruling on a motion to suppress is subject to review on appeal for abuse of discretion. *Amador v. State*, 275 S.W.3d 872, 878 (Tex. Crim. App.

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[3] Although appellant's brief raises a single, multifarious issue about the denial of his motions to suppress, we will endeavor to separate the issues related to each piece of evidence and address them accordingly.

2009). "In reviewing a trial court's ruling on a motion to suppress, appellate courts must view all of the evidence in the light most favorable to the trial court's ruling." *State v. Garcia–Cantu*, 253 S.W.3d 236, 241 (Tex. Crim. App. 2008). We use a bifurcated standard of review in assessing the trial court's ruling. *St. George v. State*, 237 S.W.3d 720, 725 (Tex. Crim. App. 2007).

We afford almost total deference to the trial court's determination of historical facts supported by the record, especially when the fact findings are based on credibility and demeanor. *State v. Martinez*, 570 S.W.3d 278, 281 (Tex. Crim. App. 2019); *Ex parte Estrada*, 573 S.W.3d 884, 891 (Tex. App.—Houston [1st Dist.] 2019, no pet.). And, we afford the same deference to the trial court's rulings on application-of-law-to-fact questions if resolving those ultimate questions turns on evaluating credibility and demeanor. *Sandifer v. State*, 233 S.W.3d 1, 2 (Tex. App.—Houston [1st Dist.] 2007, no pet.) (citing *Guzman v. State*, 955 S.W.2d 85, 89 (Tex. Crim. App. 1997)). But, "we review de novo application-of-law-to-fact questions that do not turn on credibility and demeanor." *McCulley v. State*, 352 S.W.3d 107, 117 (Tex. App.—Fort Worth 2011, pet. ref'd) (citing *Amador v. State*, 221 S.W.3d 666, 673 (Tex. Crim. App. 2007)). The trial court may choose to believe or disbelieve any or all of a witness's testimony. *Ramirez v. State*, 44 S.W.3d 107, 109 (Tex. App.—Austin 2001, no pet.).

Compliance with Texas Code of Criminal Procedure Article 38.22

In his first issue, appellant contends that the trial court erred in admitting the recording of his first interview with police. Specifically, appellant argues that all of the voices on the tape are not identified, as required by article 38.22 of the Texas Code of Criminal Procedure, which provides:

> No oral or sign language statement of an accused made as a result of custodial interrogation shall be admissible against the accused in a criminal proceeding unless:
> . . . .
>
> (3) all voices on the recording are identified.

TEX. CODE CRIM. PROC. art. § 38.22 sec. 3(a)(3). Appellant complains that Detective Jackson, who was conducting the interview, never identified himself or another officer present in the room on the tape of the interview itself.

However, contemporaneous identification of voices is not required; a statement is admissible if all material voices are identified prior to admission at trial. *See Corwin v. State*, 870 S.W.2d 23, 33 (Tex. Crim. App. 1993) (holding statement admissible when officer testified at trial that only he and appellant were involved in the recorded conversation); *Lucas v. State*, 791 S.W.2d 35, 57–58 (Tex. Crim. App. 1989) (holding statement admissible because "[i]n both pre-trial proceedings and in hearings held outside the presence of the jury during trial, there was testimony identifying the parties who directly participated in the road-scene videotape in relation to other voices audible on the record," and other voices on

tape were not material); *see also Petry v. State*, No. 01-86-00517-CR, 1987 WL 14550 (Tex. App.—Houston [1st Dist.] July 23, 1987, no pet.) (not designated for publication) ([“Article 38.22 sec. 3(a)(3)] provides that no videotape is admissible ‘unless all voices on the recording are identified. There is no requirement that the identification be made on the recording, and appellant cites no authority for his contention to the contrary.”).

Here, the interviewing officers do not identify themselves on the tape itself. However, before the tape was admitted at trial, Detective J. Jackson testified that he and Investigator J. Kelly were the only two people in the room with appellant while they conducted the interview. This testimony satisfied the article 38.22 requirement that all voices on the recording be identified.

Accordingly, we overrule issue one.

Same-Transaction Contextual Evidence

In his second issue, appellant contends that the trial court erroneously admitted evidence that appellant choked Jesika two days before he murdered her. Although it is not clear, appellant seems to be challenging the admission of three pieces of evidence—(1) appellant’s first interview with Detective Jackson, (2) appellant’s second interview with Detective Taylor, and (3) testimony offered by Taylor and Jesika’s sister, Jakquelyn.

Evidence of a crime, wrong, or act other than the offense charged is not admissible to prove that the defendant acted in conformity with his character but may be admissible for other purposes. TEX. R. EVID. 404(b). These purposes include proving intent and motive as well as illustrating other aspects of an "indivisible criminal transaction," also known as same-transaction contextual evidence. *Id.*; *Inthalangsy v. State*, 634 S.W.3d 749, 756 (Tex. Crim. App. 2021); *Devoe v. State*, 354 S.W.3d 457, 469 (Tex. Crim. App. 2011).

Same-transaction contextual evidence "illuminate[s] the nature of the crime alleged." *Inthalangsy*, 634 S.W.3d at 756; *Camacho v. State*, 864 S.W.2d 524, 532 (Tex. Crim. App. 1993). A jury is entitled to know all the facts that are "blended or closely interwoven" with a continuous criminal episode. *Inthalangsy*, 634 S.W.3d at 756; *Moreno v. State*, 721 S.W.2d 295, 301 (Tex. Crim. App. 1986). Yet, such same-transaction contextual evidence must be "necessary to the jury's understanding of the offense" such that the charged offense would make little sense without the same-transaction evidence. *Inthalangsy*, 634 S.W.3d at 756; *Pondexter v. State*, 942 S.W.2d 577, 584 (Tex. Crim. App. 1996). Whether a certain extraneous act provides sufficient context to be admissible is judged on a case-by-case basis. *See Albrecht v. State*, 486 S.W.2d 97, 100 (Tex. Crim. App. 1972) ("The circumstances which justify the admission of evidence of extraneous offenses are as varied as the factual contexts of the cases in which the question of

the admissibility of such evidence arises. Each case must be determined on its own merits."); *Mitchell v. State*, No. 14-09-00379-CR, 2010 WL 3418223, at *7–8 (Tex. App.—Houston [14th Dist.] Aug. 31, 2010, pet. ref'd) (mem. op.).

In *Devoe*, the defendant was charged with the capital murder of two girls. 354 S.W.3d at 461, 463. At trial, the State introduced evidence of several additional crimes that illustrated a three-day crime spree spread across multiple states. *Id.* at 462–66. Devoe argued that it was error to admit evidence that he stole a gun from his friend, assaulted his employer-landlady in Texas, shot and killed a bartender in Texas, and robbed an elderly woman in Pennsylvania. *Id.* at 469. These events occurred before and after the shooting deaths of the girls. *Id.* at 462–66. The trial court found that leaving out these facts created "a gaping hole" in the State's case. *Id.* at 470. The extraneous-offense evidence showed Devoe's pattern of targeting women he knew personally, including former girlfriends, how he acquired the murder weapon and two vehicles used in the crimes, and his flight from the crime scenes. *Id.* The court found that the offenses comprised one continuous course of conduct and that it was within the zone of reasonable disagreement to find the offenses to be contextual. *Id.* The Court of Criminal Appeals affirmed that judgment. *Id.* at 476.

Applying the proper deferential standard of review to this case, it is within the zone of reasonable disagreement to find that evidence of appellant's assault on

Jesika two days earlier provides necessary context to a continuing course of conduct culminating in her murder. One cannot tell the story of Jesika's death without telling how that story began. *See Inthalangsy*, 634 S.W.3d at 756 (noting that "[o]ne cannot tell the story of [the victim's] kidnapping without revealing the end of the story," i.e. her death). The April 28th assault directly influenced the behavior and communications between appellant and Jesika in the two days before her murder. Evidence of the April 28th assault explains why appellant was no longer living in the apartment but was staying with a work friend. It also explains appellant's motive—Jesika was planning on leaving appellant because of the April 28th assault, which she then discussed with her sister, Jakquelyn, and her mother. There was evidence that appellant broke the door on the 28th, which would explain how he was able to access the house and why the door was "open" when he arrived. Additionally, some of Jesika's injuries may have been caused by the previous assault; the coroner testified that the injuries were indistinguishable, and some may have occurred two days before Jesika's death.

Therefore, the trial court did not abuse its discretion in concluding that evidence of the August 28th assault was same-transaction contextual evidence and "necessary to the jury's understanding of the offense" such that the charged offense would have made little sense without it. *See Inthalangsy*, 634 S.W.3d at 756; *see also Lockhart v. State*, 847 S.W.2d 568, 571 (Tex. Crim. App. 1992)

(holding that evidence that defendant stole car four months before was admissible as same-transaction contextual evidence to show why police chased defendant and went to hotel where stolen car was located when police officer was shot and killed); *Day v. State*, No. 13-18-00258-CR, 2020 WL 486498 (Tex. App.—Corpus Christi, Jan. 30, 2020, pet. ref'd) (mem. op., not designated for publication) (holding that threatening emails sent to victim several weeks before assault were admissible as same-transaction contextual evidence to show defendant's intent to harm victim).

Accordingly, we overrule issue two.[4]

Custodial Interrogation

In issue three, appellant contends the trial court erred in denying his motion to suppress the body-cam videos taken when Officers Glenn and Taylor walked through the crime scene with appellant. Appellant contends that the body-cam videos constituted custodial interrogation and that the officers did not comply with Texas Code of Criminal Procedure article 38.22 before the recordings were made.

While the trial court did overrule appellant's pretrial motion to suppress Officer Glen's and Taylor's body cam videos, the reporter's record from the trial

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[4] Although appellate cites Texas Rule of Evidence 403 in his brief, he provides no analysis or authority to show that the probative value of the same-transaction contextual evidence was substantially outweighed by its risk of undue prejudice. Thus, to the extent that appellant attempts to raise a Rule 403 issue on appeal, we overrule it as inadequately briefed. *See* TEX. R. APP. P. 38.1(h); *Tong v. State*, 25 S.W.3d 707, 710 (Tex. Crim. App. 2000).

shows that the objected-to videos were never offered or admitted into evidence. Thus, error, if any, in the trial court's pretrial ruling is harmless. *See* TEX. R. APP. P. 44.2(b); *Castruita v. State*, 584 S.W.3d 88, 99 (Tex. App.—El Paso 2018, pet. ref'd) (holding that "a statement never admitted into evidence, and only mentioned in passing before the jury, did not contribute to the conviction[.]").

Accordingly, we overrule issue three.

Warrantless Search

In issue four, appellant contends that the trial court erred in denying his motion to suppress evidence obtained after the welfare check was completed and Jesika's body was discovered, but before the officers obtained a search warrant. Specifically, appellant's motion to suppress alleged that "[a]fter locating the body, officers began a crime scene search that included photographing and searching the interior of the residence" and requested suppression of "[a]ny and all evidence, including photographs and recording and all tangible evidence, seized by law enforcement officers or others in connection with the search of the residence located at 2400 SH 35, Apartment #1502, Alvin, Texas."[5]

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[5] Although appellant does not specify which items of evidence he contends should have been suppressed in this issue, we note that the only evidence taken from the crime scene and admitted at trial are photographs. Detective Taylor testified that any photographs admitted at trial were taken after police obtained a search warrant.

Under the emergency doctrine, "the Fourth Amendment does not bar police officers from making warrantless entries and searches when they reasonably believe that a person within is in need of immediate aid." *Mincey v. Arizona*, 437 U.S. 385, 392 (1978); *see also Brimage v. State*, 918 S.W.2d 466, 482 (Tex. Crim. App. 1994). The doctrine is "limited to the functions of protecting or preserving life or avoiding serious injury." *Laney v. State*, 117 S.W.3d 854, 861 (Tex. Crim. App. 2003). When a law-enforcement officer holds an immediate, objectively reasonable belief that a warrantless entry into a home must be made to protect someone from serious injury or death, any evidence discovered in plain view during that warrantless entry may be legally seized. *Id.* at 863.

Appellant does not contend that the officers entered the apartment illegally and seems to concede that their warrantless entry was justified under the emergency doctrine. Instead, appellant contends that "[o]fficers did not immediately seek the issuance of a warrant" once Jesika's body was discovered and there was no longer an emergency.

In *Arold v. State*, No. 01-97-00597-CR, at *4, 1998 WL 879210 (Tex. App.—Houston [1st Dist.] Oct. 22, 1998, no pet.), the police entered a murder scene, which this Court held was permissible under the emergency doctrine. The defendant did not contest the validity of the emergency entrance but contended that "the emergency had ended before the video of the crime scene began and,

therefore, the scope of the emergency doctrine was exceeded." *Id.* This Court overruled appellant's contention, noting as follows:

> The video tape showed nothing more than what was in plain view at the time the first officers entered into the apartment during the emergency doctrine search. The Emergency Response Team searched each room of the apartment. Evidence in plain view may be seized during an emergency doctrine search. If it is determined that an officer has a legal right to be at a location, his observations and the photographs of his observations are admissible. We find no compelling reason to differentiate between photographs and video tape, nor do we believe that the short time lapse between the first entry into the apartment and the subsequent taping enough to render the video tape inadmissible as fruit of an illegal search.

Id. (internal citations omitted).

The same is true in this case. The photographs of the crime scene show only what the officers saw in plain view when they entered the apartment. There is no evidence to suggest that the photographs were the result of a more intrusive or expansive search that what the officers saw during their emergency response. *See Johnson v. State*, 161 S.W.3d 176, 183 (Tex. App.—Texarkana 2005), *aff'd*, 226 S.W.3d 439, 445 (Tex. Crim. App. 2007) ("[O]nce the privacy of a residence has lawfully been invaded during an exigency, it makes no sense to require a warrant for other officers to enter and complete what officers on the scene could have properly done."). Thus, the trial court did not abuse its discretion in denying appellant's motion to suppress evidence obtained, if any, during the time between the discovery of Jesika's body and the time the officers obtained a warrant.

Accordingly, we overrule issue four.

CONCLUSION

We affirm the trial court's judgment.

Sherry Radack
Chief Justice

Panel consists of Chief Justice Radack and Justices Goodman and Hightower.

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