



**Fourth Court of Appeals**  
**San Antonio, Texas**

**MEMORANDUM OPINION**

No. 04-20-00374-CR

Robert Francis **BILUNAS**,  
Appellant

v.

The **STATE** of Texas,  
Appellee

From the 198th Judicial District Court, Kerr County, Texas  
Trial Court No. B19-83  
Honorable Rex Emerson, Judge Presiding

Opinion by: Patricia O. Alvarez, Justice

Sitting: Rebeca C. Martinez, Justice  
Patricia O. Alvarez, Justice  
Beth Watkins, Justice

Delivered and Filed: November 24, 2021

**AFFIRMED AS MODIFIED**

After the State presented evidence at a bench trial that Appellant Francis Bilunas murdered his girlfriend, Xiomara Renee Saenz, the trial court found Bilunas guilty. Bilunas was sentenced to seventy years in prison. On appeal, Bilunas raises two issues, arguing that (1) the evidence was legally insufficient to establish Saenz's cause of death as strangulation; and (2) the trial court erroneously assigned attorney's fees to Bilunas, who is indigent. We affirm the trial court's judgment as modified.

## BACKGROUND

On September 29, 2018, victim Xiomara Renee Saenz lay dead on the floor of her boyfriend Robert Francis Bilunas's repair shop with Bilunas as the only other person present. Bilunas and Saenz had been living together, but a protective order had been issued against him by the time of Saenz's death, and he was staying at the repair shop where he worked. Bilunas insisted that Saenz died of a drug overdose. An autopsy revealed Saenz's cause of death to be "suffocation and/or strangulation," and Bilunas was charged with murder.

Earlier in the day on September 29, 2018, Saenz had been at friend and neighbor Dorothy Craft's home. Saenz had packed her things to go to a women's shelter, and Craft planned to drive her there. They ate together at Craft's home, and Saenz used the phone a couple of times. Then Saenz said she was going to lie down at her home because she had a stomachache. Craft expected her to call when she got up so they could go to the women's shelter. However, the next call that Craft received was from Bilunas at his repair shop. He called Craft and asked her to come to the repair shop because he said Saenz had overdosed on drugs.

When Craft arrived at the gate of the repair shop, she called 911 and asked for an ambulance and an officer based on what Bilunas had told her on the phone about a possible drug overdose. Craft can be heard on the telephone as she arrives on the scene, discovers Saenz's body, and tells Bilunas not to leave. Craft testified at trial that she touched Saenz's body and felt blood in her throat but no breath, no pulse. Based on her nursing experience, Craft stated that she didn't attempt CPR because she felt Saenz was gone. Saenz's eyes were gazing in different directions, and they were beginning to dry. Bilunas was heading to his car and tried to leave while Craft was checking Saenz's body, but Craft insisted that he stay, and so he did.

Kerrville police were dispatched to the scene where Bilunas and Craft were waiting. Bilunas told officers that Saenz had appeared to be under the influence of pills. He said that Saenz

arrived at the repair shop uninvited because she wanted to see him and that she asked him to go buy her candy. Bilunas said that he left the shop to take a shower at a nearby park and to a convenience store to buy candy, and that when he returned, he found Saenz lying on the floor inside of the shop near a table and a toolbox. Bilunas informed officers that he tried to perform CPR but could not revive Saenz. Bilunas was arrested and jailed for violation of a protective order.

Over the course of the murder case, Bilunas maintained his innocence and insisted that Saenz died of a drug overdose. Bilunas told police that Saenz had texted him a suicidal message as a result of the protective order against him, i.e., she would kill herself if she could not be with him. Once officers found Saenz's phone, they saw no such message. During his interview with the case detective, Bilunas admitted that he drove to pick Saenz up from her home; he admitted that she did not walk to the auto repair shop. When the case detective asked Bilunas whether he and Saenz had gotten into an altercation, Bilunas yelled no, that he had beaten up Saenz the week before and that the incident was documented in a police report. In a follow-up interview between the detective and Bilunas, Bilunas admitted to hiding Saenz's phone from officers at the scene. At trial, Craft testified that during her time as Bilunas and Saenz's neighbor, she often heard them shouting at each other and regularly saw bruises on Saenz. The medical examiner testified that, although Saenz had drugs in her system, she died of strangulation and/or suffocation.

On February 4, 2020, a bench trial was held, and the trial court found Bilunas guilty. On June 5, 2020, Bilunas was sentenced seventy years in prison.

Bilunas now appeals his conviction for the offense of murder.

## LEGAL SUFFICIENCY

### A. Parties' Arguments

Bilunas argues that the evidence against him was legally insufficient to establish that he murdered his girlfriend. The State argues that the evidence against Bilunas was legally sufficient to prove that he committed murder and that his conviction should be affirmed.

### B. Standard of Review

When determining whether there is sufficient evidence to support a conviction, the reviewing court “consider[s] the combined and cumulative force of all admitted evidence in the light most favorable to the verdict to determine whether, based on that evidence and the reasonable inferences therefrom, a [trier of fact] was rationally justified in finding guilt beyond a reasonable doubt.” *Tate v. State*, 500 S.W.3d 410, 413 (Tex. Crim. App. 2016) (citing *Jackson v. Virginia*, 443 U.S. 307, 318–19 (1979)); accord *Brooks v. State*, 323 S.W.3d 893, 894 (Tex. Crim. App. 2010). “During a bench trial, the trial court is the exclusive judge of the credibility of the witnesses and the weight to be given their testimony.” *Tatro v. State*, 580 S.W.3d 740, 743 (Tex. App.—Houston [14th Dist.] 2019, no pet.) (citing *Adelman v. State*, 828 S.W.2d 418, 421 (Tex. Crim. App. 1992)). “In our analysis, we give deference to ‘the responsibility of the trier of fact to fairly resolve conflicts in testimony, to weigh the evidence, and to draw reasonable inferences from basic facts to ultimate facts.’” *Patterson v. State*, 606 S.W.3d 3, 23 (Tex. App.—Corpus Christi—Edinburg 2020, pet. ref’d) (quoting *Hooper v. State*, 214 S.W.3d 9, 13 (Tex. Crim. App. 2007)). “The verdict may not be overturned unless it is irrational or unsupported by proof beyond a reasonable doubt.” *Gamelin v. State*, No. 14-08-00977-CR, 2010 WL 1037944, at \*2 (Tex. App.—Houston [14th Dist.] Mar. 23, 2010, no pet.) (citing *Matson v. State*, 819 S.W.2d 839, 846 (Tex. Crim. App. 1991)). “A court’s role on appeal is restricted to guarding against the rare occurrence

when the factfinder does not act rationally.” *Tatro*, 580 S.W.3d at 743 (quoting *Arroyo v. State*, 559 S.W.3d 484, 487 (Tex. Crim. App. 2018)).

### **C. Applicable Law**

In a murder trial, a defendant cannot be convicted unless the death of the victim would not have occurred but for the defendant’s conduct. See TEX. PENAL CODE ANN. §§ 6.04(a), 19.02(b); *Robbins v. State*, 717 S.W.2d 348, 351 (Tex. Crim. App. 1986). If evidence suggests a concurrent cause, then the defendant will be liable if “(1) the defendant’s conduct may be sufficient by itself to have caused the harm, regardless of the existence of a concurrent cause; or (2) the defendant’s conduct and the other cause together may be sufficient to have caused the harm.” *Robbins*, 717 S.W.2d at 351 (citing TEX. PENAL CODE ANN. § 6.04(a)). But “[i]f the additional cause, other than the defendant’s conduct, is clearly sufficient, by itself, to produce the result and the defendant’s conduct, by itself, is clearly insufficient, then the defendant cannot be convicted.” *Id.*

### **D. Analysis**

Bilunas complains that the State’s evidence was insufficient to establish that Saenz died of suffocation or strangulation rather than a drug overdose. In reviewing the circumstances under which Bilunas could not have been convicted per section 6.04(a) regarding causation, we would have to conclude that the drugs in Saenz’s system were clearly sufficient to cause her death, that strangulation was clearly insufficient, and that the trial court’s verdict of guilt was not rational.

During the medical examiner’s testimony, she began her observations of Saenz’s body with the injuries to Saenz’s head and neck. She explained that a dissection of the neck muscles revealed deep, patchy bruising. There were signs of compression in the cartilage of the neck, around the bone, and multiple areas of hemorrhage to suggest deadly force and strangulation. The medical examiner also noted petechia around Saenz’s eyelids, which suggested increased blood pressure to Saenz’s head that can occur from strangulation. Saenz had bruising at the base of her neck,

upper chest, and lower neck region that were indicative of recent injury, as well as on her right arm. Not all of Saenz's bodily injuries were recent; the medical examiner noted some that were older. The medical examiner concluded from Saenz's recent injuries that her cause of death was strangulation.

The medical examiner also testified to a toxicology report regarding the drugs found in Saenz's system, which were identified as medications to treat various conditions such as bipolar disorder, anxiety, seizure disorder, and migraines. Saenz had high but not fatal levels of some substances in her system. The medical examiner agreed that combining high levels of drugs could result in death but remained firm that the evidence of strangulation fully accounted for Saenz's death.

Based on the evidence in the record, we hold there was sufficient evidence to support the trial court's finding that the death of the victim would not have occurred but for Bilunas' conduct. The record does not reflect that Saenz's strangulation was insufficient to result in her death, and the evidence showing that Saenz had high levels of some medications in her system was inconclusive as a cause of death. Therefore, we cannot conclude that the trial court's verdict was irrational. Furthermore, to the degree that Bilunas argues the conviction should be overturned because the State did not rule out other causes, he misstates the standard of review. *See Hooper*, 214 S.W.3d at 13.

We overrule Bilunas's sufficiency arguments and next address his attorney's fees issue.

#### **ATTORNEY'S FEES**

Bilunas argues and the State agrees that attorney's fees should not have been assessed against Bilunas because he is indigent. *See TEX. CODE CRIM. PROC. ANN. art. 26.04; Mayer v. State*, 309 S.W.3d 552, 557 (Tex. Crim. App. 2010). Based on the record and the briefs, we reform the trial court's judgment to delete the attorney's fees of \$12,855.

**CONCLUSION**

We conclude that the evidence was legally sufficient to establish that Bilunas strangled Saenz, murdering her. We also conclude that the trial court erred by assessing attorney's fees against Bilunas, who is indigent.

We overrule Bilunas's legal sufficiency argument on appeal and modify the judgment against him to delete attorney's fees of \$12,855.

Patricia O. Alvarez, Justice

DO NOT PUBLISH