COURT OF APPEALS
SECOND DISTRICT OF TEXAS
FORT WORTH

NO. 02-16-00192-CR

JOSHUA LEE GONZALEZ — APPELLANT

V.

THE STATE OF TEXAS — STATE

FROM THE 297TH DISTRICT COURT OF TARRANT COUNTY
TRIAL COURT NO. 1353422D

MEMORANDUM OPINION[1]

I. INTRODUCTION

Appellant Joshua Lee Gonzalez appeals his conviction for capital murder, for which he was sentenced to life imprisonment. *See* Tex. Penal Code Ann. § 19.03(a)(2) (West Supp. 2016). In five points, Gonzalez argues that the evidence is insufficient to support his conviction for capital murder and that the

[1]*See* Tex. R. App. P. 47.4.

trial court erred by denying his motion to suppress his statement because he did not voluntarily waive his rights under the United States and Texas Constitutions, *Miranda*, and article 38.22 of the Texas Code of Criminal Procedure. For the reasons set forth below, we will affirm.

II. FACTUAL BACKGROUND

Because Gonzalez challenges the sufficiency of the evidence to support his conviction, we set forth a detailed summary of the pertinent testimony from the trial.[2]

A. Gonzalez's Sister

Gonzalez's sister, Christianna Taylor, testified that she had a conversation via text messages with Gonzalez on December 6, 2013, during which he aired his complaints about his ex-wife Sara and his girlfriend Jennifer[3] and mentioned that "[t]he last b---ch that f---ed me over is at Rockwood Park with five .45 rounds in her, probably frozen solid by now." Taylor thought Gonzalez was "just talking smack as usual." Gonzalez continued,

> And I'm sorry, but I don't plan on being around much. Trying to move to Dallas soon. Just want to be left alone away from everyone -- everything. Sorry. Hope you'll understand. And Jennifer isn't W-H-S-T. What she needs to worry about is me, the monster she created. I don't care anymore. That's why the b--ch that set me up

[2]The four-day jury trial, which spans almost 900 pages in the reporter's record, and the fact that Gonzalez's trial testimony differed from his recorded statement necessarily dictate a lengthy factual background.

[3]The record reflects that Jennifer went by the last names Gonzalez, Sullivan, and Cooley.

> and had me robbed is at the park under a tree, beat the s--t out of for hours, then put four in the chest, one in the head. Why I'm not taking anymore s--t, that's why anyone that f--ks me over ends the same way.

Taylor did not respond to Gonzalez's text because he "always had a sense of grandeur, always trying to -- he's trying to get some people to perceive him as something that he is not."

During the week following their text conversation, Gonzalez called Taylor at work and asked for an appointment[4] while disguising his voice. Taylor asked Gonzalez what he was talking about, and he said, "Well, you don't want to end up like Ryan [Rice, the victim]." Taylor again asked Gonzalez what he was talking about, and then he started talking in his normal voice and having a normal conversation. During the phone call, Gonzalez told Taylor what he and Jennifer had done to Ryan. Gonzalez related that during the previous week's ice storm, Jennifer's grandmother had seen that Ryan was living in a tent in a neighbor's backyard, so Jennifer's grandmother had allowed Ryan to come inside and sleep on the couch because it was too cold to be outside.[5] Gonzalez said that while Ryan had been at Jennifer's house, she had stolen prescription pills and money out of Jennifer's purse. Jennifer had confronted Ryan about the missing items, and Ryan had denied taking them. Jennifer and Ryan had engaged in a physical

[4]The record does not disclose what Taylor did for a living.

[5]Although not stated in the record, it appears that Jennifer's grandmother lived in the same house as Jennifer and that Gonzalez often stayed there.

altercation, and the missing pills had fallen out of Ryan's bra. Jennifer and Gonzalez had then each grabbed one of Ryan's legs and had retrieved pills from her vagina. Ryan had yelled that Gonzalez and Jennifer had sexually assaulted her and that she was going to call the police. Gonzalez then said that he "knew what had to be done."

Taylor testified that she was shocked and confused by the information Gonzalez had relayed to her in this phone conversation. After the phone conversation, Taylor saw an article in the *Star-Telegram* about Ryan, and she called the Fort Worth Police Department. Taylor wanted to confirm that the information she had received from Gonzalez matched the article that she had read because she had a feeling that the two stories were part of the same situation. A detective came to Taylor's work and photographed the text messages she had received from Gonzalez.

B. The Investigating Detective

Sergeant William Paine of the Fort Worth Police Department testified that on the evening of December 15, 2013, he received a call about a dead body that had been discovered at Rockwood Park. When Sergeant Paine arrived on the scene, he noted that "it appeared that the body had been there for at least a little while" and that the female victim, whose identity was unknown, had been shot to

death. When Sergeant Paine and a crime scene officer went back to the park the following day to search for any potential shell casings, they found none.[6]

After the medical examiner's office identified the body and informed Sergeant Paine that the victim was Ryan Rice, Sergeant Paine began checking databases to try to find out who her family was so that they could be notified. Sergeant Paine's search led him to Jennifer, whom he interviewed on December 18, 2013.[7]

Five days later, on December 23, 2013, Taylor called and spoke with Sergeant Paine about the text messages that she had received from Gonzalez. That same day, Sergeant Paine went to Taylor's place of employment and took photographs of the text messages. Based on the text messages, Sergeant Paine prepared an arrest warrant for Gonzalez and instructed officers in the fugitive unit to impound Gonzalez's vehicle[8] and to transport Gonzalez to Sergeant Paine's office so that he could be interviewed.

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[6]Sergeant Paine testified that he believed that the shell casings were collected by Gonzalez because "[i]t was the week of the cobblestone ice in Fort Worth and it was extremely white and bright as far as the ground and it would have offset the shell casings much easier than in the dark, wet grass" that he had searched through.

[7]Sergeant Paine did not testify about the details of Jennifer's interview.

[8]The search of Gonzalez's vehicle revealed two glass meth pipes that contained residue and "some white rock-like substance," which Sergeant Paine assumed was methamphetamine.

Also on December 23, 2013, Sergeant Paine conducted a second consensual interview with Jennifer, but she terminated the interview when he began questioning her further about Ryan's death. Sergeant Paine obtained a search warrant for Jennifer's home and ordered his colleagues in the homicide unit to execute the search warrant immediately after Jennifer left his office; he was concerned about the potential destruction of evidence because Jennifer "was fully aware that [the police] were focusing in on that location and [on] her."

While the search warrant was being executed at Jennifer's home, Sergeant Paine interviewed Gonzalez, who had been arrested at his place of employment and transported to the police station. Gonzalez initially denied that he was involved in Ryan's death, but he changed his response when Sergeant Paine confronted Gonzalez with the text messages that he had sent Taylor. During the interview, Gonzalez supplied the date of Ryan's death even though the date of her death had not been published in the article in the *Star-Telegram*.[9]

Gonzalez initially indicated that he had driven Ryan to the park in his vehicle, but he later admitted that he had driven Jennifer's Ford Expedition. Gonzalez told Sergeant Paine that during the ride to the park, Ryan continually went back and forth between the second row of seating and where the third row of seating would have been if the seat had not been folded down. Gonzalez told Sergeant Paine that he had gagged Ryan because "she would not shut up" on

[9]Gonzalez stipulated at trial that Ryan died on December 5, 2013.

the drive to the park. Gonzalez said that he had placed a sock in her mouth and had attempted to secure it in her mouth with electrical tape.

Gonzalez originally told Sergeant Paine that he was by himself with Ryan at the park, but he later admitted that Jennifer was with him at the time of Ryan's death.[10] Gonzalez said that as Ryan was walking away from the vehicle and as he was walking back towards the vehicle, he heard the click of a knife, he turned and saw Ryan coming toward him with a knife, so he reached behind his back, pulled out his firearm, and blindly fired at Ryan. Sergeant Paine did not believe that Gonzalez had "blindly fired" based on the trajectory of the shots: one had entered Ryan's vaginal area and had moved up the body; one had entered Ryan's head and had moved backwards toward the same entry in the vaginal area; and then there were additional shots in Ryan's chest and legs. When Sergeant Paine asked Gonzalez about the bullet wound to Ryan's vagina, he did not have much of a reaction and could not explain how she had received that bullet wound. Gonzalez also could not explain how Ryan had been shot in the back of the head based on his explanation of the events. Sergeant Paine asked Gonzalez where the gun was that he had used to kill Ryan, and Gonzalez said that it had been sold at a gun show in Dallas.

After December 23, Jennifer was interviewed a third time and consented to a second search of her house. During the second search, officers located two

[10]Sergeant Paine testified that the investigation also revealed that Shawna Cooper was present in the Ford Expedition when Ryan was murdered.

rolls of electrical tape, a Lone Star debit card with Ryan's name on it, and pieces of Ryan's cell phone. During the course of the investigation, officers learned that Gonzalez had taken apart Ryan's phone to retrieve the battery, which he then discarded into the trash. During the search of Jennifer's Ford Expedition, a small piece of black electrical tape with blood on it was found in a crevice of a hatch located in the floor at the back of the vehicle.[11]

Sergeant Paine asked Jennifer where Gonzalez had put the murder weapon, and based on her response, Sergeant Paine went to speak with Angel Marquez. Sergeant Paine asked Marquez about the weapon, and he gave Sergeant Paine a semiautomatic pistol in a small pistol case, along with several magazines. Sergeant Paine testified that the gun recovered from Marquez "ballistically matched to the firearm that killed Ryan."[12]

[11]Uvonna Alexander, a senior forensic scientist in the biology unit of the Fort Worth Police Department Crime Lab, compared the blood stain on the fragment of electrical tape that was retrieved from Jennifer's Ford Expedition to the known samples of DNA from Ryan and Gonzalez. The testing revealed that the blood on the electrical tape had originated from Ryan and that Gonzalez could not be excluded as a contributor to the DNA profile in the blood on the electrical tape.

[12]Additionally, Jamie Becker, a firearm examiner for the Tarrant County Medical Examiner's Office crime laboratory, testified that after her examination of the gun retrieved from Marquez and of the bullets retrieved during the autopsy, she concluded that the bullets had been fired from that particular gun and that the bullet fragments, though inconclusive, had features consistent with being Remington Golden Saber bullets like the ones in the magazine that were in the gun case retrieved from Marquez.

Sergeant Paine testified at trial that he did not believe Gonzalez's self-defense version of the events but that he believed Gonzalez was being truthful when he said that he had shot Ryan. Sergeant Paine based this belief on Gonzalez's confession, the text messages Gonzalez had sent to Taylor, Gonzalez's act of transferring the murder weapon to Marquez, and the statement provided by Jennifer.

Sergeant Paine testified that he found no evidence to indicate that Jennifer was the shooter, but even if the jury determined that Jennifer was the shooter, Sergeant Paine would still have charged Gonzalez with the crime because of the law of parties.[13] Sergeant Paine explained that Gonzalez had admitted that he had assaulted Ryan, that he was the one who had gagged her and tied her up, and that he had brought his gun to the park.

C. The Medical Examiner

Dr. Richard Christian Fries, a deputy medical examiner in the Tarrant County Medical Examiner's Office, testified that he conducted the autopsy on Ryan's body. Dr. Fries testified that an external review of Ryan's body revealed black electrical tape around her neck, a number of gunshot wounds and bruises, and fractured teeth. Dr. Fries described the location of the gunshot wounds on Ryan's body: one gunshot wound from a bullet that had entered the back of her head and had exited above her right eyebrow; a second gunshot wound from a

[13]Jennifer and Shawna were also arrested in connection with Ryan's death.

bullet that had entered the left side of her chest and had exited her left shoulder; a third gunshot wound from a bullet that had entered her left breast, had exited her left armpit, and had reentered her left arm; a fourth gunshot wound to her left abdomen from a bullet that had entered the superficial skin and some of the subcutaneous tissue; a fifth gunshot wound from a bullet that had entered her external genitalia and had lodged in the back of the abdomen; a sixth gunshot wound to the left inner thigh from a bullet that had grazed the skin; and a seventh gunshot wound on her left leg where a bullet had exited her left thigh. Dr. Fries recovered bullets and bullet fragments, which were turned over to the firearm examiner for ballistics testing. Dr. Fries testified that although he had identified seven gunshot wounds on Ryan's body, multiple wounds could have been caused by the same bullet as it exited and reentered the body. Dr. Fries determined that the cause of Ryan's death was multiple gunshot wounds and that the manner of her death was homicide.

D. Gonzalez

Gonzalez took the stand in his defense and testified that he had started smoking methamphetamine in 1995 or 1996, that he had smoked approximately one and a half grams every day, and that he had purchased his methamphetamine from Marquez. Gonzalez testified that his usual routine was to use methamphetamine before work, at lunch, between 2:00 and 3:00 p.m., and on the way home from work. Gonzalez said that if he did not get high in the

afternoon, he could stay awake but would not be as productive and would "have the shakes, nod off, get distracted."

Gonzalez testified that on December 5, 2013, he drove from Grand Prairie to Fort Worth, stopped at Marquez's house to purchase at least a quarter ounce of methamphetamine, and then went to Jennifer's house to have dinner and drop off methamphetamine for her. Gonzalez said that approximately ten minutes after he arrived, Jennifer went to the bedroom to get money from her purse so that she could pay Gonzalez for the methamphetamine and discovered that her money was gone. Jennifer's children denied taking the money, but her daughter stated that she had given Ryan Jennifer's prescription pain pills because Ryan had asked for them. Jennifer asked Ryan about the missing money and pills, and Ryan denied taking them. Jennifer told Ryan to shake out her bra, and the missing pills and money fell out. A fist fight between Jennifer and Ryan ensued. When additional money fell out of Ryan's pants, Jennifer made Ryan remove her pants, and Jennifer and Gonzalez each grabbed one of Ryan's legs and found a baggie with methamphetamine "hanging out" of her vagina.[14]

After Gonzalez told Ryan that she needed to leave, a second fight broke out between Jennifer and Ryan during which Jennifer hit Ryan, causing her to hit a set of metal bunk beds. Gonzalez testified that he broke up the second fight and told Ryan to pack her belongings and leave. Ryan called several different

[14]On cross-examination, Gonzalez admitted that at some point while they were still at the house, he tased Ryan once, and Jennifer tased Ryan until Gonzalez took the Taser away from Jennifer.

people and asked them to come pick her up, but no one agreed to do so. Gonzalez then loaded Ryan's belongings into Jennifer's Ford Expedition so that he could drop her off somewhere. Jennifer did not want Gonzalez to be alone with Ryan, so she went with them.

While Gonzalez was driving, Ryan and Jennifer continued arguing. Gonzalez became frustrated by the arguing and fighting, and "that's when [Ryan] got taped up." He pulled over and took one of Ryan's socks out of her bag, put it over her mouth, and taped around it "to shut her up." He also taped her hands together.

Gonzalez then drove to pick up Jennifer's friend Shawna. While Gonzalez drove around for another thirty to forty-five minutes trying to figure out where they could take Ryan, Jennifer and Ryan argued, and Jennifer hit Ryan with an ammunition can or a toolbox that she had found in the vehicle.[15] Gonzalez believed that Jennifer was going to beat Ryan to death, so he decided to turn into the next opening off University Drive, which was Rockwood Park.

Gonzalez stopped at the bleachers near the baseball fields and pulled Ryan out of the back of the vehicle. He testified that the gun was in the center console; he did not have the gun on his person. He grabbed Ryan's two bags and threw them on the ground and was reaching in to grab Ryan's remaining

[15]On cross-examination, Gonzalez testified that even though Ryan's teeth were shattered, there was no blood splattering in the Ford Expedition because Jennifer had cleaned out the vehicle.

belongings when Jennifer exited the vehicle, and he heard gunshots. Gonzalez testified that Jennifer was outside the vehicle, that she had his gun, and that Ryan was lying on the ground.

Gonzalez testified that his intent was "[t]o put Ryan out there with her stuff" and "let her call somebody." He testified that he did not know that Jennifer was going to shoot Ryan, that the shooting was not part of any plan that he had, and that it surprised him that Jennifer had shot Ryan. Gonzalez testified that he did not pick up the shell casings and did not see anyone pick them up.

Gonzalez did, however, pick up Ryan's belongings and throw them back into the vehicle.[16] Gonzalez and Jennifer got back in the vehicle and drove straight to Jennifer's house where he immediately went in the back bedroom and started "[i]increasing [his] high."

Gonzalez ended up staying at Jennifer's house for four days. During those four days, Gonzalez and Jennifer talked about what had happened at the park, and he figured that it would be easier if he took the blame because he "could make it through the system easier." Gonzalez planned to claim that he had shot Ryan in self-defense because he wanted Jennifer and Shawna to stay out of jail so they could parent their children.

Approximately one week later, Gonzalez called Marquez and bartered with him; Gonzalez gave Marquez the gun that was used to kill Ryan, and Marquez

[16]Gonzalez ultimately disposed of Ryan's belongings by dropping them into a Salvation Army donation box.

gave Gonzalez a Glock 22 .40 caliber semiautomatic pistol, as well as a quarter ounce of “dope” and a quarter ounce of “hydro.”

Gonzalez testified about his drug use on the day of his arrest. He said that he had “got[ten] high” before he left for work, had picked up breakfast, had eaten it at the mall and had “got[ten] high again,” had driven to work, and had used meth at lunch before the SWAT Team arrived and took him to the police station.

Gonzalez said that he was high when he arrived at the police station; if he had not been high, he would not have talked to the police that day. Gonzalez told the police the story that he and Jennifer had made up. Gonzalez testified that he sent his sister the text messages because he was “coming down” from a high and “just had to vent.”

On cross-examination, Gonzalez testified that the shot in Ryan’s vagina was not his way of saying that she could no longer steal from him but was “more of Jennifer saying, ‘We’re not having this.’” The prosecutor asked, “[S]o you would have us believe that all of this stuff with Jennifer happened so quickly that you didn’t see any of the shots, but Jennifer did also take the time to shoot [Ryan] in the vagina, in the chest, in the leg, in the arm[,] and in the head?” Gonzalez responded, “All I heard was bang, bang, bang, bang, bang.” When challenged that there was no way possible for the shots to go off rapidly in succession due to the different trajectories, Gonzalez testified that he was high when he heard the shots. When questioned about his capabilities while he was

high, Gonzalez admitted that he was able to hold a job, go to work, and drive around each day after he used methamphetamine.

Gonzalez also admitted that despite allegedly being high during the interview with Sergeant Paine, Gonzalez was able to answer questions "somewhat" and took the time to try to throw Sergeant Paine off course in his investigation. Although Gonzalez did not remember telling his sister that he had to "take care" of Ryan because she was going to call the police, he admitted that if his sister had testified that Gonzalez had told her that, then she possibly had a better memory because she does not use drugs.

Gonzalez further admitted that because he was not allowed to write Jennifer directly while he was in jail, he had "[p]robably" addressed his letters to Jennifer's attorney but had intentionally used an incorrect address and had put Jennifer's name as the return address so that the post office would use the return address and ultimately send his letters to Jennifer. In his January 19, 2014 letter to Jennifer, Gonzalez wrote, "I've been told as long as y'all's [Jennifer's and Shawna's] stories match, then we'll get time served and both of y'all will be out in no time. Tell her she pulled a knife after we let her out of the truck and you were still in the front seat." On January 23, 2014, Gonzalez wrote in his letter to Jennifer:

> I never said I did it. And if I did, it was only that I did what I had to do in self-defense, nothing too incriminating. So you got the letter with my statement -- what my statement was, and I haven't deviated from that and I told them I was out of my mind tripping on

> acid and shot. It should get dropped to wrongful disposal of body on me and maybe failure to report a crime on you.

In his January 26, 2014 letter to Jennifer, Gonzalez wrote, "[D]on't flip out and flip script. We're good." In his February 6, 2014 letter to Jennifer, Gonzalez wrote, "What sucks is the law of parties. Whatever one of us gets, we both get. So let's shoot for non-felony assault, do time served[,] and go home."

E. The Verdict and The Sentence

After hearing the testimony set forth above and reviewing the evidence admitted during the trial, the jury was charged on the elements of capital murder and the law of parties and found Gonzalez guilty of capital murder as charged in the indictment.[17] The trial court sentenced Gonzalez to life in prison.

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[17]The jury charge stated the following:

> Now, if you find from the evidence beyond a reasonable doubt that on or about the 5th day of December 2013, in Tarrant County, Texas, the defendant, Joshua Lee Gonzalez, did then and there intentionally cause the death of an individual, Ryan Rice, by shooting her with a firearm, and the said defendant was then and there in the course of committing or attempting to commit the offense of kidnapping of Ryan Rice or if you find that the defendant, Joshua Lee Gonzalez, acting with the intent to promote or assist in the commission of the offense of capital murder, encouraged, aided, or attempted to aid Jennifer Cooley or Shawna Cooper to commit the offense of capital murder, then you will find the defendant guilty of the offense of capital murder.

The jury returned a general verdict, which did not specify whether it found Gonzalez guilty as a principal or as a party.

III. SUFFICIENCY OF THE EVIDENCE

In his first point, Gonzalez argues that the evidence is insufficient to support his conviction for capital murder. Gonzalez concedes that he kidnapped Ryan but argues that the evidence is insufficient to prove that he acted with the intent to murder her or to assist in her murder as a party.

A. Standard of Review

In our due-process review of the sufficiency of the evidence to support a conviction, we view all of the evidence in the light most favorable to the verdict to determine whether any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. *Jackson v. Virginia*, 443 U.S. 307, 319, 99 S. Ct. 2781, 2789 (1979); *Jenkins v. State*, 493 S.W.3d 583, 599 (Tex. Crim. App. 2016). This standard gives full play to the responsibility of the trier of fact to resolve conflicts in the testimony, to weigh the evidence, and to draw reasonable inferences from basic facts to ultimate facts. *Jackson*, 443 U.S. at 319, 99 S. Ct. at 2789; *Jenkins*, 493 S.W.3d at 599.

The trier of fact is the sole judge of the weight and credibility of the evidence. *See* Tex. Code Crim. Proc. Ann. art. 38.04 (West 1979); *Blea v. State*, 483 S.W.3d 29, 33 (Tex. Crim. App. 2016). Thus, when performing an evidentiary sufficiency review, we may not re-evaluate the weight and credibility of the evidence and substitute our judgment for that of the factfinder. *See Montgomery v. State*, 369 S.W.3d 188, 192 (Tex. Crim. App. 2012). Instead, we determine whether the necessary inferences are reasonable based upon the

cumulative force of the evidence when viewed in the light most favorable to the verdict. *Murray v. State*, 457 S.W.3d 446, 448 (Tex. Crim. App.), *cert. denied*, 136 S. Ct. 198 (2015). We must presume that the factfinder resolved any conflicting inferences in favor of the verdict and defer to that resolution. *Id.* at 448–49; *see Blea*, 483 S.W.3d at 33.

To determine whether the State has met its burden under *Jackson* to prove a defendant's guilt beyond a reasonable doubt, we compare the elements of the crime as defined by the hypothetically correct jury charge to the evidence adduced at trial. *See Jenkins*, 493 S.W.3d at 599; *Crabtree v. State*, 389 S.W.3d 820, 824 (Tex. Crim. App. 2012) ("The essential elements of the crime are determined by state law."). Such a charge is one that accurately sets out the law, is authorized by the indictment, does not unnecessarily increase the State's burden of proof or restrict the State's theories of liability, and adequately describes the particular offense for which the defendant was tried. *Jenkins*, 493 S.W.3d at 599. The law as authorized by the indictment means the statutory elements of the charged offense as modified by the factual details and legal theories contained in the charging instrument. *See id.*; *see also Rabb v. State*, 434 S.W.3d 613, 616 (Tex. Crim. App. 2014) ("When the State pleads a specific element of a penal offense that has statutory alternatives for that element, the sufficiency of the evidence will be measured by the element that was actually pleaded, and not any alternative statutory elements.").

The standard of review is the same for direct and circumstantial evidence cases; circumstantial evidence is as probative as direct evidence in establishing guilt. *Jenkins*, 493 S.W.3d at 599. In determining the sufficiency of the evidence to show an appellant's intent, and faced with a record that supports conflicting inferences, we "must presume—even if it does not affirmatively appear in the record—that the trier of fact resolved any such conflict in favor of the prosecution, and must defer to that resolution." *Matson v. State*, 819 S.W.2d 839, 846 (Tex. Crim. App. 1991).

B. Capital Murder and the Law of Parties

For purposes of this appeal, a person commits the offense of capital murder if the person commits murder as defined in penal code section 19.02(b)(1) and the person intentionally commits the murder in the course of committing or attempting to commit kidnapping. *See* Tex. Penal Code Ann. § 19.03(a)(2); *see also id.* § 19.02(b)(1) (West 2011). "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." *Id.* § 7.01(a) (West 2011). 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. *Id.* § 7.02(a)(2) (West 2011). In determining whether an appellant is a party to an offense, we may consider "events before, during, and after the commission of the offense." *Gross*

v. State, 380 S.W.3d 181, 186 (Tex. Crim. App. 2012) (quoting *Wygal v. State*, 555 S.W.2d 465, 468–69 (Tex. Crim. App. 1977)). We may consider circumstantial evidence and look to the actions of the defendant showing an understanding and common design to commit the offense. *Ransom v. State*, 920 S.W.2d 288, 302 (Tex. Crim. App. 1994) (op. on reh'g), *cert. denied*, 519 U.S. 1030 (1996).

C. Sufficient Evidence Supports Capital Murder Conviction

Here, the indictment charged Gonzalez with intentionally causing the death of Ryan by shooting her with a firearm while Gonzalez was in the course of committing or attempting to commit the offense of kidnapping Ryan. Under a hypothetically correct jury charge, the State had to prove beyond a reasonable doubt that (1) Gonzalez or a person for whom he was criminally responsible (2) intentionally (3) caused the death of Ryan (4) by shooting her with a firearm (5) in the course of kidnapping or attempting to kidnap Ryan. *See* Tex. Penal Code Ann. § 19.03(a)(2). On appeal, Gonzalez challenges only the sufficiency of the evidence to support the jury's implied finding that he or a person for whom he was criminally responsible caused Ryan's death. Gonzalez argues that he did not have the specific intent that Ryan's death would result from his actions of leaving her in the park and that he never intended to assist Jennifer in causing Ryan's death because he had no idea that Jennifer would use his gun to shoot Ryan.

As detailed above, the evidence at trial connected Gonzalez, either as a principal or as a party, with Ryan's death. The day after Ryan was murdered, Gonzalez texted his sister that he had beat Ryan for hours; "then put four in the chest, one in the head"; and had left her at the park under a tree during an ice storm. After Gonzalez was arrested, he gave the police Ryan's date of death, which had not been released to the public. *See Dossett v. State*, 216 S.W.3d 7, 31 (Tex. App.—San Antonio 2006, pet. ref'd) ("[A]ppellant's oral and written statements . . . showed his knowledge of the murder scene, including details not released to the public, and were probative of his intent to kill [the victim]."). During the interview with Sergeant Paine, Gonzalez confessed to shooting Ryan, contending that he had "blindly fired" at her in self-defense. The record, however, does not bear out Gonzalez's defensive theory; instead, the physical evidence, which includes the medical examiner's findings that a bullet was fired into Ryan's vagina, refutes the possibility that Gonzalez "blindly fired" at Ryan, and Gonzalez admitted at trial that the self-defense story was fabricated after the fact. Gonzalez's trial testimony—in which he abandoned his self-defense story and described hearing five successive shots before turning around to see Jennifer with the gun and Ryan lying on the ground—did not comport with the trajectory of the shots that wounded Ryan. Moreover, the evidence revealed that Gonzalez owned the murder weapon; that he brought it along when they (Gonzalez, Jennifer, and Ryan) departed from Jennifer's house; that he disposed of the murder weapon afterwards by giving it to Marquez, even though he told

Sergeant Paine during the interview that he had sold it at a gun show; and that he wrote letters to Jennifer while he was in jail, attempting to make sure that her account of the shooting was consistent with the story he had told the police. *See generally Guevara v. State*, 152 S.W.3d 45, 50 (Tex. Crim. App. 2004) ("Attempts to conceal incriminating evidence, inconsistent statements, and implausible explanations to the police are probative of wrongful conduct and are also circumstances of guilt.").

Viewing the evidence in the light most favorable to the verdict, we conclude that a rational jury could find beyond a reasonable doubt that Gonzalez, acting as a principal or as a party, intentionally caused Ryan's death while in the course of kidnapping or attempting to kidnap Ryan. *See Douglas v. State*, 489 S.W.3d 613, 626 (Tex. App.—Texarkana 2016, no pet.) (holding evidence sufficient to support capital murder conviction under the law of parties); *Pirtle v. State*, No. 05-02-00312-CR, 2003 WL 21350074, at *3 (Tex. App.—Dallas June 9, 2003, pet. ref'd) (not designated for publication) (holding evidence sufficient to support finding that appellant was guilty as a principal or as a party to the offense of capital murder). Accordingly, we hold the evidence sufficient to support Gonzalez's conviction for capital murder as alleged in the indictment, and we overrule Gonzalez's first point.

IV. MOTION TO SUPPRESS

In his remaining four points, Gonzalez argues that the trial court abused its discretion by denying his motion to suppress because his statement to Sergeant

Paine was involuntary. Gonzalez contends that he did not voluntarily and knowingly waive his rights under the Fifth and Fourteenth Amendments to the United States Constitution; *Miranda*; article I, section 9 of the Texas constitution;[18] and article 38.22 of the Texas Code of Criminal Procedure because he was high on methamphetamine when he gave his statement.

A. Standard of Review

We review a trial court's ruling on a motion to suppress evidence under a bifurcated standard of review. *Amador v. State*, 221 S.W.3d 666, 673 (Tex. Crim. App. 2007); *Guzman v. State*, 955 S.W.2d 85, 89 (Tex. Crim. App. 1997). We give almost total deference to a trial court's rulings on questions of historical fact and application-of-law-to-fact questions that turn on an evaluation of credibility and demeanor, but we review de novo application-of-law-to-fact questions that do not turn on credibility and demeanor. *Amador*, 221 S.W.3d at 673; *Estrada v. State*, 154 S.W.3d 604, 607 (Tex. Crim. App. 2005); *Johnson v. State*, 68 S.W.3d 644, 652–53 (Tex. Crim. App. 2002).

[18]Although Gonzalez contends in his fourth point that his rights under article I, section 9 of the Texas constitution were violated, he does not argue that the Texas constitution provides any greater protection than the United States Constitution. *See Heitman v. State*, 815 S.W.2d 681, 691 n.23 (Tex. Crim. App. 1991) (stating that error premised on the Texas constitution requires argument and authority to support the proposition that it provides greater protection than the United States Constitution). Accordingly, we overrule Gonzalez's fourth point. *See* Tex. R. App. P. 38.1(i); *Johnson v. State*, 853 S.W.2d 527, 533 (Tex. Crim. App. 1992) (declining to address appellant's arguments concerning his state-constitutional rights because appellant did not make a distinction between the United States Constitution and the Texas constitution), *cert. denied*, 510 U.S. 852 (1993).

B. Law on Voluntariness of Confessions

1. Under the United States Constitution

When determining whether a confession should have been excluded because it was taken in violation of the United States Constitution, we must decide whether the confession was voluntary or coerced. *See Arizona v. Fulminante*, 499 U.S. 279, 285–86, 111 S. Ct. 1246, 1251–52 (1991); *Colorado v. Connelly*, 479 U.S. 157, 167, 107 S. Ct. 515, 521–22 (1986). We determine the voluntariness of a confession by examining the totality of the circumstances surrounding the confession. *Creager v. State*, 952 S.W.2d 852, 856 (Tex. Crim. App. 1997). A statement is "involuntary," for the purposes of federal due process, only if there was official, coercive conduct of such a nature that any statement obtained thereby was unlikely to have been the product of an essentially free and unconstrained choice by its maker. *Alvarado v. State*, 912 S.W.2d 199, 211 (Tex. Crim. App. 1995). "Absent [coercive] police conduct causally related to the confession, there is simply no basis for concluding that any state actor has deprived a criminal defendant of due process of law." *Connelly*, 479 U.S. at 164, 107 S. Ct. at 520.

2. Under *Miranda*

The State has the burden of showing by a preponderance of the evidence that the defendant knowingly, intelligently, and voluntarily waived his *Miranda* rights. *See Joseph v. State*, 309 S.W.3d 20, 24 (Tex. Crim. App. 2010). There

are two facets to any inquiry with respect to the adequacy of a purported waiver of *Miranda* rights:

> First, the waiver must be "voluntary in the sense that it was the product of a free and deliberate choice rather than intimidation, coercion, or deception." Second, the waiver must be made "with a full awareness both of the nature of the right being abandoned and the consequences of the decision to abandon it."

See Ripkowski v. State, 61 S.W.3d 378, 384 (Tex. Crim. App. 2001) (quoting *Colorado v. Spring*, 479 U.S. 564, 573, 107 S. Ct. 851, 857 (1987)), *cert. denied*, 539 U.S. 916 (2003); *see also Leza v. State*, 351 S.W.3d 344, 349 (Tex. Crim. App. 2011).

3. Under Article 38.22

Under section 6 of article 38.22 of the Texas Code of Criminal Procedure—the "general voluntariness" provision—a defendant may claim that his statement was not freely and voluntarily made and thus may not be used as inculpatory evidence. *See Oursbourn v. State*, 259 S.W.3d 159, 169 (Tex. Crim. App. 2008); *see also* Tex. Code Crim. Proc. Ann. art. 38.22, § 6 (West Supp. 2016). The general voluntariness provision may be construed as "protecting people from themselves because the focus is upon whether the defendant voluntarily made the statement," and police overreaching is not required to claim involuntariness. *Oursbourn*, 259 S.W.3d at 172. The issues are whether the statement was freely and voluntarily made without compulsion or persuasion and whether the defendant waived his rights knowingly, intelligently, and voluntarily. *See id.*

Although relevant, evidence of intoxication does not necessarily render a statement involuntary. *Paolilla v. State*, 342 S.W.3d 783, 792 (Tex. App.—Houston [14th Dist.] 2011, pet. ref'd); *see also Oursbourn*, 259 S.W.3d at 173 (stating that intoxication is usually not enough by itself to render a statement inadmissible under article 38.22, but it is a factor to consider). When there is evidence of the defendant's use of narcotics, medications, or other mind-altering agents, the question becomes whether those intoxicants prevented the defendant from making an informed and independent decision. *Paolilla*, 342 S.W.3d at 792 (citing *Jones v. State*, 944 S.W.2d 642, 651 (Tex. Crim. App. 1996), *cert. denied*, 522 U.S. 832 (1997)).

C. The Suppression Hearing[19]

At the hearing on Gonzalez's motion to suppress, Sergeant Paine testified that before the interview started, he removed Gonzalez's handcuffs and advised him why he was under arrest. Sergeant Paine read Gonzalez the *Miranda* warnings from a printed sheet and asked if he understood them. Gonzalez

[19]When the State offered the video of Gonzalez's statement during the trial, Gonzalez asked to approach the bench and renewed his objection "subject to our trial motion to suppress." The trial court summarily denied Gonzalez's objection and admitted the video. Because the parties therefore did not consensually litigate the suppression issue again before the factfinder at trial, we apply the general rule and consider only the evidence adduced at the suppression hearing. *See Perez v. State*, 495 S.W.3d 374, 387 (Tex. App.—Houston [14th Dist.] 2016, no pet.); *McQuarters v. State*, 58 S.W.3d 250, 255 (Tex. App.—Fort Worth 2001, pet. ref'd). Moreover, even considering additional evidence from the trial regarding Gonzalez's methamphetamine use, there is no evidence to show that Gonzalez's statement was not given voluntarily. *Cf. Perez*, 495 S.W.3d at 387.

asked a question about being able to stop the interview, and Sergeant Paine explained that Gonzalez could stop the interview at any point by stating that he did not want to talk anymore. Based on Gonzalez's question and the way he engaged in the conversation, Sergeant Paine concluded that Gonzalez understood English and was lucid. Sergeant Paine asked Gonzalez if he was willing to waive his rights and speak to him, and Gonzalez answered, "Yes." Sergeant Paine testified that at the time Gonzalez waived his rights, he did not appear to be intoxicated. Sergeant Paine further testified that Gonzalez had no injuries or physical issues that would have deprived him of understanding that he was waiving his rights and that no promises were made in order to secure Gonzalez's waiver.

After Gonzalez waived his rights, Sergeant Paine began the interview around 4:20 p.m. and recorded it with audio and video equipment. During the two-hour interview, Gonzalez admitted that he had shot and killed Ryan. Approximately one hour into the interview, Gonzalez told Sergeant Paine that he was high on methamphetamine. Sergeant Paine, who had eight years of experience working in the narcotics unit and with the Drug Enforcement Agency (DEA), testified that Gonzalez's behavior up to that point did not lead him to believe that Gonzalez was intoxicated. At no point during the interview did Gonzalez ask to stop the interview, state that he no longer wanted to talk, ask to speak to an attorney, or indicate that he did not feel well or needed medical treatment.

The DVD shows that Gonzalez sat still while he waited for Sergeant Paine to come into the interview room. When Sergeant Paine drew a map of the park on a dry erase board, Gonzalez was able to point out on the map the location of where he had left Ryan's body. At one point, Gonzalez even drew his own map of the park on the dry erase board. Shortly after Gonzalez informed Sergeant Paine that he was high on methamphetamine, Sergeant Paine left the interview room for approximately eight minutes, and Gonzalez put his head down on the table. When Sergeant Paine returned, Gonzalez continued answering questions for a few minutes. Sergeant Paine then left the interview room for approximately forty-five minutes, during which time Gonzalez laid his head on the table and napped. When Sergeant Paine returned to the interview room and awakened Gonzalez, Gonzalez signed a consent form, allowing officers to swab his mouth. When an officer came in to photograph Gonzalez and swab his mouth, Gonzalez followed each instruction the officer gave him. Throughout the interview, Gonzalez gave coherent responses to Sergeant Paine's questions and did not exhibit any erratic behaviors.

At the conclusion of the suppression hearing, the State admitted the DVD of the interview into evidence, and the trial court recessed until it had an opportunity to review the DVD. The trial court thereafter signed an order denying Gonzalez's motion to suppress.

After abating this case for the trial court to make the voluntariness findings required by article 38.22, section 6,[20] the trial court entered the following:

> The witness Detective Sergeant William Paine of the Ft. Worth Police Department testified truthfully. The defendant was in custody pursuant to a valid and legally sufficient arrest warrant issued by a neutral and detached magistrate supported by probable cause. Detective Paine properly identified the defendant as the person he interviewed on December 23, 2013. The interview room was described by Detective Paine and was appropriately climate controlled and of an adequate size. The defendant was not interviewed while wearing [hand]cuffs. The interview lasted approximately two hours. The interview was recorded. The court reviewed the recording of the interview admitted as State['s] PX 2. There appeared to be no gaps or missing portions of the interview. The defendant was read his [*Miranda*] rights. Those rights defendant was read complied with 38.22 TCCP. The defendant indicated he understood his rights. After being read his [*Miranda*] rights and understanding them, the defendant voluntarily waived his rights and spoke with Detective Paine.
>
> The defendant was not intoxicated. The defendant appeared to have his mental faculties[,] and there was no coercion on the part of Detective Paine. The Defendant did not invoke his rights during the interview. The defendant did not ask to stop the interview[,] nor did he invoke his right to counsel. The Defendant was not under the influence of a controlled substance.
>
> The court finds there was no police overreaching or coercion in the interview of the defendant. The interview was not over[ly] lengthy so as to overcome the will of the defendant. The defendant's statement was made under voluntary conditions. The Court finds the defendant ["]knowingly, intelligently, and voluntarily" waived the rights set out in Article 38.22. The Court finds the defendant's statement in State['s] PX 2 was freely and voluntarily made. [Internal citations to the record omitted.]

[20] *See Vasquez v. State*, 411 S.W.3d 918, 920 (Tex. Crim. App. 2013) (holding that "written findings are required in all cases concerning voluntariness. The statute has no exceptions.").

D. Gonzalez Voluntarily Waived His Rights

With regard to Gonzalez's argument that his statement was taken in violation of the United States Constitution, he states in his brief that he "does not contend, and the record does not show, that law enforcement agents coerced [him] in any manner." Although the record demonstrates that Gonzalez told Sergeant Paine an hour into the two-hour interview that he was high on methamphetamine, any tendency that the influence of methamphetamine may have had to overbear Gonzalez's will to resist waiving his *Miranda* rights was due to no causative action on the part of the police and therefore cannot serve to undermine the voluntariness of his subsequent statements for Fifth Amendment purposes. *See Leza*, 351 S.W.3d at 350. Because during Gonzalez's statement there was no coercion by the police—a requirement under federal due process for proving a confession was involuntary—we hold that Gonzalez's statement was not taken in violation of the federal due-process guarantees. *See id.*; *Ripkowski*, 61 S.W.3d at 384 ("If appellant's cocaine use and mental disorders alone impelled him to confess, that is of no constitutional consequence."); *Alvarado*, 912 S.W.2d at 211–12 (holding evidence reflected that no official, coercive conduct occurred with respect to the taking of appellant's statement).

With regard to Gonzalez's argument that his statement was not voluntary under *Miranda*, because he does not contend that he was coerced or intimidated, we focus our discussion on the second inquiry into the validity of his waiver under *Miranda*—whether his alleged methamphetamine use affected his awareness of

both the nature of the right being abandoned and the consequences of the decision to abandon it. *See Leza*, 351 S.W.3d at 351. At the pretrial hearing on Gonzalez's motion to suppress, the officer who interrogated Gonzalez testified that at the time Gonzalez waived his rights, Gonzalez did not appear to be intoxicated. The officer, Sergeant Paine, testified that he had eight years of experience working in the narcotics unit and with the DEA and that Gonzalez's behavior during the first hour of the interview did not lead Sergeant Paine to believe that Gonzalez was intoxicated. The trial court also had the opportunity to watch the video of the interview. After hearing the testimony of Sergeant Paine and watching the video of the interview, during which the trial court had the opportunity to observe that Gonzalez's conduct demonstrated that he had the requisite level of awareness of the nature of his *Miranda* rights and the consequences of waiving them, the trial court was entitled to believe Sergeant Paine, rather than Gonzalez. *See id.* The trial court thus did not err by concluding that the State satisfied its burden by a preponderance of the evidence to establish that Gonzalez had voluntarily waived his *Miranda* rights.

With regard to Gonzalez's argument that his statement was taken in violation of article 38.22, his alleged intoxication from being under the influence of methamphetamine is a factor in the voluntariness inquiry. *See id.* at 352. The trial court, however, reviewed the video recording of the interview during which Gonzalez's statement was made, measured the officer's perceptions with respect to the voluntariness of Gonzalez's waiver, and made findings that Gonzalez's

statement was voluntary under article 38.22. The trial court's findings are supported by the record, which reflects that Sergeant Paine, who read Gonzalez his rights and conducted the interview, testified that no promises were made in order to secure Gonzalez's waiver of his rights; that Gonzalez did not appear to be intoxicated when he waived his rights; and that Gonzalez did not appear to be intoxicated at the point in the interview when he mentioned that he was high on methamphetamine. Based on these circumstances, the trial court could rationally have concluded that Gonzalez's alleged methamphetamine intoxication, if any, prior to the interview was not so acute as to overcome his capacity to persuade him to waive his statutory rights. *See id.* at 353. Under the totality of the circumstances, the evidence supports the trial court's finding that Gonzalez voluntarily waived his article 38.22 rights before giving his statement. *See Williams v. State*, 502 S.W.3d 262, 274 (Tex. App.—Houston [14th Dist.] 2016, pet. ref'd) (holding that evidence supported trial court's 38.22 finding of voluntariness of appellant's waiver).

Because the totality of the circumstances demonstrates that Gonzalez voluntarily waived his rights under the United States Constitution, *Miranda*, and article 38.22, we hold that the trial court did not err by denying Gonzalez's motion to suppress. *See Leza*, 351 S.W.3d at 351, 353 (upholding trial court's denial of appellant's motion to suppress where appellant challenged voluntariness under federal constitution and article 38.22 due to alleged heroin intoxication); *Jones*, 944 S.W.2d at 650–51 (upholding trial court's denial of appellant's motion to

suppress because the totality of the circumstances showed that appellant's waiver was voluntary despite claimed intoxication). Accordingly, we overrule Gonzalez's second, third, and fifth points.

V. CONCLUSION

Having overruled all five of Gonzalez's points, we affirm the trial court's judgment.

/s/ Sue Walker
SUE WALKER
JUSTICE

PANEL: WALKER, MEIER, and KERR, JJ.

DO NOT PUBLISH
Tex. R. App. P. 47.2(b)

DELIVERED: August 17, 2017