COURT OF APPEALS
SECOND DISTRICT OF TEXAS
FORT WORTH

NO. 02-16-00300-CR

ANDREA NICOLE JENNINGS — APPELLANT

V.

THE STATE OF TEXAS — STATE

FROM THE 396TH DISTRICT COURT OF TARRANT COUNTY
TRIAL COURT NO. 1459102R

MEMORANDUM OPINION[1]

A jury found Appellant Andrea Nicole Jennings guilty of the murder of her former girlfriend's three-year-old son, B.C., and assessed her punishment at fifty years' confinement. The trial court sentenced Appellant accordingly. In seven points, Appellant challenges the sufficiency of the evidence to support her conviction, the denial of her motion to suppress her statement to Mansfield

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

police, and the admission of twenty-three of the State's exhibits. We affirm the trial court's judgment.

I. Brief Procedural and Factual Background

Andrea Cyr and Appellant had dated before, but they began dating again in 2011 during Cyr's pregnancy. Cyr's son, B.C., was born in February 2012.

In early 2015, Appellant, Cyr, and B.C. moved in with Appellant's mother and sister in Mansfield, Texas. Cyr and Appellant began having problems, and on February 24, 2015, Cyr and B.C. moved out and checked into Heritage Inn, a motel in Grand Prairie. Cyr was starting a new job the next day, February 25, and on that morning, she was unable to get in touch with a friend who had agreed to babysit B.C. Appellant agreed to babysit instead.

Appellant dropped Cyr off at work that morning and then picked her up at the end of her shift. When they arrived back at the motel, Cyr changed B.C.'s diaper and noticed some bruises. Appellant told her that he had fallen. At some point in the evening, B.C. became unresponsive. When Cyr could not wake B.C., she told Appellant to call 911.

Appellant called 911 and reported that B.C. had come home from the daycare and had become unresponsive. Cyr spoke to the dispatcher after directing Appellant to perform CPR. The dispatcher sent emergency medical services to the motel; B.C. was taken to a hospital by ambulance and died that evening from blunt force trauma to the abdomen.

Appellant ultimately admitted to Grand Prairie police that she had whipped the child with a belt in her Mansfield home. In her later discussion with Mansfield police, she admitted that after she whipped him but on that same day, she kicked him in the abdominal area hard enough to propel him from the Grand Prairie motel room doorway to the bed several feet away. Appellant was charged with capital murder, felony murder, and injury to a child. The indictment also included a deadly weapon allegation that was later waived. Appellant elected the jury to assess her punishment.

Appellant tried unsuccessfully to exclude recordings of her admissions to police, the belt retrieved from the Mansfield apartment, and pre-autopsy and autopsy photographs of B.C. from the jury's consideration. The jury found Appellant not guilty of capital murder but guilty of the lesser included offense of felony murder. The trial court sentenced her to fifty years' confinement in accordance with the jury's punishment verdict. Appellant timely filed a notice of appeal.

II. The Evidence Is Legally Sufficient to Support Appellant's Conviction.

In her first point, Appellant challenges the sufficiency of the evidence to support her murder conviction.

A. Standard of Review

In our due-process review of the sufficiency of the evidence to support a conviction, we view all 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.

B. Elements of Felony Murder and Injury to a Child

A person commits felony murder if he "commits or attempts to commit a felony, other than manslaughter, and in the course of and in furtherance of the commission or attempt, or in immediate flight from the commission or attempt, he commits or attempts to commit an act clearly dangerous to human life that causes" someone's death. Tex. Penal Code Ann. § 19.02(b)(3) (West 2011). The underlying felony Appellant was charged with committing was injury to a child. *See Contreras v. State*, 312 S.W.3d 566, 584 (Tex. Crim. App.) (acknowledging that offense of injury to a child can be an underlying felony in the felony murder of that child), *cert. denied*, 562 U.S. 987 (2010); *Johnson v. State*, 4 S.W.3d 254, 258 (Tex. Crim. App. 1999) (holding same).

A person commits injury to a child in scenarios such as the one before us "if he intentionally, knowingly, recklessly, or with criminal negligence[] by act . . . causes to a child . . . (1) serious bodily injury; (2) serious mental deficiency, impairment, or injury; or (3) bodily injury." Tex. Penal Code Ann. § 22.04(a) (West Supp. 2016). A child for the purposes of this offense is a

person fourteen years old or younger. *Id.* § 22.04(c)(1). Injury to a child is a result-oriented offense requiring a mental state that relates not to the specific conduct but to the result of the conduct. *Williams v. State*, 235 S.W.3d 742, 750 (Tex. Crim. App. 2007). The culpable mental state may be inferred from the acts of the accused or the surrounding circumstances, which include not only acts but also words and conduct. *Ledesma v. State*, 677 S.W.2d 529, 531 (Tex. Crim. App. 1984).

C. The Jury Was Charged on Three Different Theories of Felony Murder.

The trial court charged the jury on three different theories of felony murder. The jury was asked to determine whether Appellant committed or attempted to commit an act clearly dangerous to human life by

- kicking B.C. with her foot, which caused his death;
- striking him with a belt, which caused his death; or
- striking him with or against a hard or soft object or surface, which caused his death,

when she was "in the course of or immediate flight from the commission or attempted commission of a felony, to-wit: injury to a child." *See* Tex. Penal Code Ann. §§ 19.02(b)(3), 22.04(a). The jury returned a general verdict of guilt.

When the jury is authorized to convict on any one of several theories or methods of commission of the same offense and returns a general verdict of guilt, it does not matter that the evidence is insufficient to sustain one or more of

the theories so long as it is sufficient to sustain the conviction under at least one theory. *Campbell v. State*, 426 S.W.3d 780, 786 (Tex. Crim. App. 2014).

D. The Evidence Satisfies the Elements of Injury to a Child and Felony Murder.

1. Injury to a Child

The evidence is sufficient to support the elements of the underlying felony offense of injury to a child. *See* Tex. Penal Code Ann. § 22.04(a); *Campbell*, 426 S.W.3d at 786. The jury heard the following evidence:

- B.C. was three years old;
- After initially denying it, Appellant admitted to police that
  - (1) She kicked B.C. through the doorway of the motel room, pushing him with her foot on his lower back when he refused to walk into the hotel room;
  - (2) She kicked B.C. a second time in his abdominal area, pointing to the right side of her own abdomen when asked where her shoe contacted his body;
  - (3) The second kick sent B.C. from the motel room doorway through the air to the bed, where he landed on his left side and bounced off; and
  - (4) She did not tell Cyr that she had kicked him;
- The distance from the motel room doorway to the bed was roughly six feet, and a person would have to use some force to propel a child that distance;
- Based on B.C.'s external bruising and the large amount of fluid in his abdomen, the attending ER physician who treated B.C. and pronounced him dead suspected some sort of abdominal trauma;
- The deputy medical examiner who autopsied B.C.'s body found that he had an acute three-inch rupture of his stomach and an acute half-

inch tear of his small intestine caused by blunt force trauma within hours of his death;

- Only a significant force could have caused the ruptures of B.C.'s organs;
- An adult kick would be a significant force; and
- The three-inch stomach tear and half-inch tear to B.C.'s small intestine were significant injuries.

Based on the appropriate standard of review, we hold that the jury could have found the evidence sufficient to find that Appellant "intentionally, knowingly, recklessly, or with criminal negligence[] by act" caused B.C., a child younger than fourteen years old, "(1) serious bodily injury; (2) serious mental deficiency, impairment, or injury; or (3) bodily injury." Tex. Penal Code Ann. § 22.04(a), (c)(1).

2. Felony Murder

The evidence is also sufficient to support Appellant's conviction for felony murder. *See* Tex. Penal Code Ann. § 19.02(b)(3). In addition to the evidence cited above, the jury heard evidence that:

- B.C. was pronounced dead at 11:05 p.m., about two hours after he arrived at the emergency room, without ever having stabilized;
- His cause of death was blunt force trauma of the abdomen;
- His manner of death was homicide;
- An adult kicking a three-year-old child in the abdomen once or twice was committing an act clearly dangerous to human life that could cause the child's death; and
- Someone admitting to kicking B.C. in the stomach on the day of his death would help date the injury.

Viewing the evidence in the light most favorable to the verdict, we hold that the jury could have properly found beyond a reasonable doubt that Appellant committed murder by committing injury to a child, a felony, "and in the course of and in furtherance of the commission" of that felony, she "commit[ted] . . . an act clearly dangerous to human life that cause[d B.C.'s] death." *Id.* We overrule Appellant's first point.

III. The Trial Court Did Not Err by Denying Appellant's Motion to Suppress Her Confession to Detective Timothy Wing.

A. Background

Detective Timothy Wing of the Mansfield Police Department testified that he arrived at the Heritage Inn motel in Grand Prairie at approximately 10:53 p.m. on February 25, 2015 in response to a call from the Grand Prairie police to the Mansfield police about Appellant's statements to the Grand Prairie police that she had whipped B.C. with a belt in Mansfield. Detective Wing spoke to both Cyr and Appellant at the motel. Eventually, after B.C. died but before Appellant knew about it, the Mansfield police arrested her on outstanding traffic warrants and drove her to the Mansfield public safety building for an interview. Detective Wing and Detective Patrick Knotts conducted the recorded interview. In that interview, Appellant confessed to kicking B.C. Detective Wing testified that Appellant told the officers that "she kicked [B.C.] into the room and he hit the bed and bounced off."

B. Appellant's Suppression Issue and Related Arguments

Appellant filed a motion to suppress the evidence gleaned from her interview with Detectives Wing and Knotts,[2] but the trial court denied her motion and admitted the evidence. In her second point, Appellant contends that the trial court erred by denying her motion to suppress because her statement was taken in violation of article 38.22 of the code of criminal procedure. *See* Tex. Code Crim. Proc. Ann. art. 38.22 (West Supp. 2016). Appellant does not argue that she did not receive the article 38.22 warnings. Instead, she explicitly argues that her statement was involuntary because she did not understand the article 38.22 warnings—specifically that she could terminate her interview at any time—and implicitly argues that she did not waive her rights set out in the warnings. *See id.* art. 38.22, §2–§3(a)(2), (e). Finally, she also contends that Detective Wing "used a method to induce [her] to give a statement that" violated her due process rights.

C. 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). In reviewing the trial court's decision, we do not engage in our own factual

[2]Appellant limits her point to evidence stemming from that interview; we likewise limit our discussion to the same.

review. *Romero v. State*, 800 S.W.2d 539, 543 (Tex. Crim. App. 1990); *Best v. State*, 118 S.W.3d 857, 861 (Tex. App.—Fort Worth 2003, no pet.). The trial judge is the sole trier of fact and judge of the credibility of the witnesses and the weight to be given their testimony. *Wiede v. State*, 214 S.W.3d 17, 24–25 (Tex. Crim. App. 2007). Therefore, we give almost total deference to the trial court's rulings on: (1) questions of historical fact, even if the trial court's determination of those facts was not based on an evaluation of credibility and demeanor and (2) application-of-law-to-fact questions that turn on an evaluation of credibility and demeanor. *Amador*, 221 S.W.3d at 673; *Montanez v. State*, 195 S.W.3d 101, 108–09 (Tex. Crim. App. 2006); *Johnson v. State*, 68 S.W.3d 644, 652–53 (Tex. Crim. App. 2002). But when application-of-law-to-fact questions do not turn on the credibility and demeanor of the witnesses, we review the trial court's rulings on those questions de novo. *Amador*, 221 S.W.3d at 673; *Estrada v. State*, 154 S.W.3d 604, 607 (Tex. Crim. App. 2005); *Johnson*, 68 S.W.3d at 652–53.

Stated another way, when reviewing the trial court's ruling on a motion to suppress, we must view the evidence in the light most favorable to the trial court's ruling. *Wiede*, 214 S.W.3d at 24; *State v. Kelly*, 204 S.W.3d 808, 818 (Tex. Crim. App. 2006). When the trial court makes explicit fact findings, we determine whether the evidence, when viewed in the light most favorable to the trial court's ruling, supports those fact findings. *Kelly*, 204 S.W.3d at 818–19. We then review the trial court's legal ruling de novo unless its explicit fact

findings that are supported by the record are also dispositive of the legal ruling. *Id.* at 818.

We must uphold the trial court's ruling if it is supported by the record and correct under any theory of law applicable to the case even if the trial court gave the wrong reason for its ruling. *State v. Stevens*, 235 S.W.3d 736, 740 (Tex. Crim. App. 2007); *Armendariz v. State*, 123 S.W.3d 401, 404 (Tex. Crim. App. 2003), *cert. denied*, 541 U.S. 974 (2004).

D. Substantive Law

Article 38.21 of the code of criminal procedure provides that "[a] statement of an accused may be used in evidence against him if it appears that the same was freely and voluntarily made without compulsion or persuasion, under the rules hereafter prescribed." Tex. Code Crim. Proc. Ann. art. 38.21 (West 2005). Article 38.22 of the code of criminal procedure provides,

> Sec. 2. No written statement made by an accused as a result of custodial interrogation is admissible as evidence against him in any criminal proceeding unless it is shown on the face of the statement that:
>
> > (a) the accused, prior to making the statement, . . . received from the person to whom the statement is made a warning that:
> >
> > > (1) he has the right to remain silent and not make any statement at all and that any statement he makes may be used against him at his trial;
> > >
> > > (2) any statement he makes may be used as evidence against him in court;
> > >
> > > (3) he has the right to have a lawyer present to advise him prior to and during any questioning;

(4) if he is unable to employ a lawyer, he has the right to have a lawyer appointed to advise him prior to and during any questioning; and

(5) he has the right to terminate the interview at any time; and

(b) the accused, prior to and during the making of the statement, knowingly, intelligently, and voluntarily waived the rights set out in the warning prescribed by Subsection (a) of this section.

Sec. 3. (a) No oral . . . statement of an accused made as a result of custodial interrogation shall be admissible against the accused in a criminal proceeding unless:

. . . ;

(2) prior to the statement but during the recording the accused is given the warning in Subsection (a) of Section 2 above and the accused knowingly, intelligently, and voluntarily waives any rights set out in the warning;

. . . ;

(e) The courts of this state shall strictly construe Subsection (a) of this section and may not interpret Subsection (a) as making admissible a statement unless all requirements of the subsection have been satisfied by the state, except that:

. . . ;

(2) the accused was given the warning in Subsection (a) of Section 2 above or its fully effective equivalent.

Tex. Code Crim. Proc. Ann. art. 38.22.

A statement may be found involuntary under three theories: (1) failure to comply with article 38.22; (2) failure to comply with *Miranda v. Arizona*, 384 U.S. 436, 86 S. Ct. 1602 (1966); or (3) failure to comply with requirements of due process or due course of law by obtaining the statement through coercion or

improper influences or when the defendant is not competent to make it. *See, e.g.*, *Miller v. State*, 196 S.W.3d 256, 266 (Tex. App.—Fort Worth 2006, pet. ref'd).

A defendant's waiver of her rights under article 38.22 may be inferred from her words and actions. *Leza v. State*, 351 S.W.3d 344, 353 (Tex. Crim. App. 2011). Trickery or deceit does not render a statement involuntary unless it was calculated to yield a false confession or violated due process. *Creager v. State*, 952 S.W.2d 852, 856 (Tex. Crim. App. 1997). We look at the totality of the circumstances surrounding the taking of the statement in deciding whether it was voluntary. *Id.*

E. The Trial Court's Findings of Fact

The trial court announced its findings regarding Appellant's confession in open court:

> The Court will find that on February 25th of 2015 at approximately 22:53 p.m., Detective Wing arrived at the location in Grand Prairie, Texas at the Heritage Inn and met with the defendant at that time. The defendant . . . [w]as not placed under arrest formally until approximately 1:55 a.m. on the morning of the 26th of February of 2015 for valid traffic warrants out of the Bedford Police Department.
>
> The defendant was transported to the Mansfield Police Department. At approximately 2:30 a.m., the interview began with Detective Wing, Detective Knotts, and the defendant. The defendant was advised of her rights pursuant to Article 38.22, section 2(a)(1) through (5). The defendant indicated that she understood the rights.
>
> There was not a formal request by the detective if she would waive her rights and answer any questions. However, the defendant never invoked her right to counsel nor asked to terminate the

> interview at any time and began discussing with the detectives and answering their questions.
>
> The Court will find that prior to the making of the statement . . . , the defendant knowingly, intelligently, [and] voluntarily waived the rights set out in . . . Article 38.22 section 2(a)(1) through (5) and . . . 38.22, section 2, section (b), [and] that there was no coercion on behalf of the officers. The interview was done freely and voluntarily by the defendant.
>
> And the Court will deny the motion to suppress and allow and will rule that State's Exhibit 1 for purposes of this hearing shall be admissible.

F. Analysis

Our review of the record shows that Detective Wing informed Appellant of her rights, *see* Tex. Code Crim. Proc. art. 38.22, § 3; *Miranda*, 384 U.S. at 444–45, 86 S. Ct. at 1612. Appellant acknowledged each right verbally, including her understanding of her right to terminate the interview at any time. She never indicated that she wanted to terminate the interview. Nothing in the record evidences that she lacked the ability to understand her rights or that she did in fact misunderstand them. We therefore hold that Appellant waived her rights under article 38.22. *See Leza*, 351 S.W.3d at 353. Further, while the police arguably used some trickery or deception in questioning Appellant, in that they did not tell her that B.C. was dead until after she confessed, our review of the record does not show that any actions of the police appeared calculated to produce an untruthful confession, nor did those actions offend due process. *See Creager*, 952 S.W.2d at 856. Considering all the circumstances, we hold that Appellant's will was not overborne, her statement was voluntary, and the trial

court did not err by denying her motion to suppress. We overrule Appellant's second point.

IV. The Trial Court Did Not Abuse Its Discretion by Admitting Various State's Exhibits over Appellant's Rule 403 Objections.

In her remaining five points, Appellant complains of the admission of twenty-three exhibits of the State:

State's Exhibit 27	The In-Car Camera Video Recording from the Grand Prairie Police Car (Point Three)
State's Exhibit 30	The Belt Mansfield Police Retrieved from Appellant's Apartment (Point Four)
State's Exhibit 28	The Video Recording of Appellant's Interview with Mansfield Police at the Mansfield Police Department (Point Five)
State's Exhibits 8–24	Various Pre-Autopsy Photographs of (1) B.C.'s Naked Corpse Highlighting Surface Injuries, (2) the Belt, and (3) the Belt and the Corpse (Point Six)
State's Exhibits 31–33	Autopsy Photographs of B.C.'s Abdominal Cavity and Stomach (Point Seven)

A. Forfeiture

1. Appellant Failed to Preserve Her Predicate Complaints.

In Points Three, Four, Five, Six, and Seven, Appellant complains that the proper predicate was not laid for the admission of each challenged exhibit. However, she did not object on that ground to the admission of any of the challenged exhibits. To preserve a complaint for our review, a party must have presented to the trial court a timely request, objection, or motion that states the specific grounds for the desired ruling if they are not apparent from the context of

the request, objection, or motion. Tex. R. App. P. 33.1(a)(1); *Douds v. State*, 472 S.W.3d 670, 674 (Tex. Crim. App. 2015), *cert. denied*, 136 S. Ct. 1461 (2016). Further, the trial court must have ruled on the request, objection, or motion, either expressly or implicitly, or the complaining party must have objected to the trial court's refusal to rule. Tex. R. App. P. 33.1(a)(2); *Everitt v. State*, 407 S.W.3d 259, 262–63 (Tex. Crim. App. 2013). A reviewing court should not address the merits of an issue that has not been preserved for appeal. *Ford v. State*, 305 S.W.3d 530, 532 (Tex. Crim. App. 2009).

Additionally, the complaint made on appeal must comport with the complaint made in the trial court or the error is forfeited. *Clark v. State*, 365 S.W.3d 333, 339 (Tex. Crim. App. 2012); *Lovill v. State*, 319 S.W.3d 687, 691–92 (Tex. Crim. App. 2009) ("A complaint will not be preserved if the legal basis of the complaint raised on appeal varies from the complaint made at trial."); *Pena*, 285 S.W.3d 459, 464 (Tex. Crim. App. 2009) ("Whether a party's particular complaint is preserved depends on whether the complaint on appeal comports with the complaint made at trial."). To determine whether the complaint on appeal comports with that made at trial, we consider the context in which the complaint was made and the parties' shared understanding at that time. *Clark*, 365 S.W.3d at 339; *Resendez v. State*, 306 S.W.3d 308, 313 (Tex. Crim. App. 2009); *Pena*, 285 S.W.3d at 464. Because Appellant did not raise a predicate objection at trial, she has forfeited those complaints in her third, fourth, fifth, sixth, and seventh points.

2. Appellant Failed to Preserve Her "Balancing Test" Complaints in Points Four, Five, Six, and Seven.

Within her third, fourth, fifth, sixth, and seventh points, Appellant contends that the trial court did not conduct a balancing test as required by rule 403. While she requested a balancing test in her objection to the admission of State's Exhibit 27 (the in-car camera video recording from the Grand Prairie police car) and thus preserved that portion of her third point, she did not mention a balancing test in her objections to the admission of the remaining challenged exhibits. We therefore hold her "balancing test" complaints in Points Four through Seven forfeited. *See Clark*, 365 S.W.3d at 339; *Lovill*, 319 S.W.3d at 691–92; *Pena*, 285 S.W.3d at 464.

B. We Overrule Appellant's Complaint in Point Three That the Trial Court Did Not Conduct a Rule 403 Balancing Test.

As for Appellant's preserved complaint in Point Three that the trial court did not conduct the balancing test required by rule 403, the law does not require the trial court to conduct the balancing test on the record or to state its findings and conclusions based on the test, *Williams v. State*, 958 S.W.2d 186, 195 (Tex. Crim. App. 1997), nor does the law require that the trial court state on the record that it has conducted a balancing test, *Reyes v. State*, 480 S.W.3d 70, 77 (Tex. App.—Fort Worth 2016, pet. ref'd). When the trial court rules on an objection under rule 403, we presume that it has engaged in the required balancing test, *Williams*, 958 S.W.2d at 195; *Sanders v. State*, 422 S.W.3d 809, 816 n.8 (Tex. App.—Fort Worth 2014, pet. ref'd), absent evidence showing that the trial court

did not perform the test. *Rojas v. State*, 986 S.W.2d 241, 250 (Tex. Crim. App. 1998). We therefore overrule Appellant's complaint in Point Three that the trial court did not conduct a rule 403 balancing test before admitting State's Exhibit 27, the in-car camera video recording from the Grand Prairie police car.

C. Appellant Preserved Her Rule 403 Complaints of Undue Prejudice in All Five Points.

The State contends that Appellant forfeited her rule 403 objections in Points Four through Seven by not specifying the rule 403 ground or grounds upon which she based her objections. *See Cannon v. State*, No. 02-06-196-CR, 2007 WL 3037738, at *6 (Tex. App.—Fort Worth Oct. 18, 2007, pet. ref'd) (mem. op., not designated for publication). We disagree. Below is a list of the relevant objections and rulings at trial:

- **Point Three:** Appellant's objection to the admission of State's Exhibit 27, the in-car camera video recording from the Grand Prairie police car, was, "[W]e object under 403 that the probative value is substantially outweighed by the prejudicial effect[and] ask the Court to do a balancing[test]." The trial court overruled the objection and admitted the evidence.

- **Point Four:** Appellant's objection to the admission of State's Exhibit 30, a belt taken from her home in Mansfield, was, "I will make a 403 objection to State's 30, Your Honor." The trial court overruled the objection and admitted the evidence.

- **Point Five:** Appellant's objection to the admission of State's Exhibit 28, a copy of the interview Detective Wing conducted with Appellant was, "The only objection I had beyond that [(those raised in her motion to suppress)] was the 403." The trial court overruled the objections and admitted the evidence.

- **Point Six:** Appellant's objection to the admission of State's Exhibits 8 through 24, photographs of B.C.'s corpse, was, "Your Honor, we'll

object on 403 grounds." The trial court overruled the objection and admitted the photographs.

- **Point Seven:** Appellant's objection to the admission of State's Exhibits 31–33, autopsy photographs of B.C., was, "We object on 403 grounds, Your Honor." The trial court overruled the objection and admitted the photographs.

Appellant's initial rule 403 objection complained of unfair prejudice. Looking at her subsequent abbreviated objections and the items to which she objected, we conclude that the trial prosecutor and the trial judge understood from the context that Appellant's rule 403 ground for the remaining challenged exhibits remained unfair prejudice.[3] *See State v. Rosseau*, 396 S.W.3d 550, 555 (Tex. Crim. App. 2013); *Resendez*, 306 S.W.3d at 313. We therefore hold for Points Three through Seven that Appellant preserved her rule 403 complaints that the probative value of the challenged exhibits is substantially outweighed by a danger of unfair prejudice, *see* Tex. R. Evid. 403, and we now address those complaints.

D. The Trial Court Did Not Abuse Its Discretion by Admitting the Challenged Evidence.

In conducting a rule 403 analysis, a court must balance the probative force of the evidence and the proponent's need for it against any tendency that evidence may have to lead the jury to resolve an issue on an incorrect ground "or [to] distract the jury from the main issues." *Gigliobianco v. State*, 210 S.W.3d

[3]To the extent that Appellant intended to complain on appeal of any other portion of rule 403, we agree with the State that she has forfeited such complaint.

637, 641 (Tex. Crim. App. 2006). The court must also evaluate how much time the proponent would need to develop the evidence, whether the evidence is repetitive of evidence already admitted, and whether the jury is able to fairly consider the evidence. *Id.* at 641–42.

We review a trial court's decision to admit evidence for an abuse of discretion. *Martinez v. State*, 327 S.W.3d 727, 736 (Tex. Crim. App. 2010), *cert. denied*, 563 U.S. 1037 (2011). A trial court does not abuse its discretion when its decision is within the zone of reasonable disagreement. *Montgomery v. State*, 810 S.W.2d 372, 391 (Tex. Crim. App. 1991) (op. on reh'g).

Of the twenty-three exhibits challenged, twenty are photographs. As the Texas Court of Criminal Appeals has explained,

> Rule 403 requires that a photograph have some probative value and that its probative value not be substantially outweighed by its inflammatory nature. A court may consider many factors in determining whether the probative value of photographs is substantially outweighed by the danger of unfair prejudice. These factors include: 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. The admissibility of photographs over an objection is within the sound discretion of the trial judge.

Williams v. State, 301 S.W.3d 675, 690 (Tex. Crim. App. 2009) (citations omitted), *cert. denied*, 560 U.S. 966 (2010).

1. The Belt, its Photograph, and Photographs of the Belt Next to B.C.'s Body (State's Exhibits 21–24 and 30)

The police seized the belt from the Mansfield apartment after Appellant

admitted hitting the child with a belt at that apartment. The belt was named in the indictment and jury charge as a weapon used in committing injury to B.C. and felony murder under one of the State's theories. At trial, Appellant contested B.C.'s cause of death and the requisite mental state in the commission of injury to a child. The belt, along with its photograph and the three photographs of the belt next to matching injuries on the surface of Appellant's naked corpse, allowed the jury to see the connections between Appellant and those injuries and to reject any contention that B.C.'s death was accidental. The State spent only about two pages of the reporter's record convincing the trial court to admit the belt and two pages discussing the belt and the photographs of it and the corpse with it. We hold that the trial court did not abuse its discretion by admitting the belt and the related photographs. *See id.*

2. Remaining Pre-Autopsy and Autopsy Photographs (State's Exhibits 8–20 and 31–33)

The remaining pre-autopsy photographs of B.C.'s naked corpse highlight the bruising and abrasions on his body from different angles and distances. They also depict the size of his body, allowing the jury to compare B.C.'s size to Appellant's size when watching and hearing her confess to kicking him across the motel room. The autopsy photographs, which are the most difficult to look at, show B.C.'s damaged internal organs. However, they were particularly necessary for the jury to see because Appellant challenged both B.C.'s cause of death, suggesting that his constipation was related or that sepsis was the cause

of death, and the timing of his fatal injury, attempting to place blame on his mother. The deputy medical examiner used the photographs to explain B.C.'s injuries and to rebut Appellant's theories. We hold that the trial court did not abuse its discretion by admitting the remaining photographs of B.C.'s corpse or the three autopsy photographs showing his damaged internal organs. *See id.*; *Dawkins v. State*, No. 08-13-00012-CR, 2016 WL 5957311, at *10–12 (Tex. App.—El Paso Oct. 14, 2016, no pet.).

3. Appellant's Recorded Interviews with Law Enforcement (State's Exhibits 27 and 28)

State's Exhibit 27, the in-car camera video recording from the Grand Prairie police car, contains Appellant's confession to whipping B.C. with a belt excessively and lying about it. State's Exhibit 28, Appellant's interview with the Mansfield police at the Mansfield Police Department, contains a more detailed confession of that conduct as well as Appellant's confession that she kicked B.C. in the abdominal area. Other evidence before the jury connected kicking with B.C.'s cause of death. State's Exhibit 27 took about fifty-three minutes to play before the jury and less than ten pages of the reporter's record for both sides to develop. State's Exhibit 28 took about an hour to play for the jury and less than fifteen pages of the reporter's record for both parties to discuss. Appellant challenged B.C.'s cause of death at trial and attempted to cast suspicion on B.C.'s mother, Andrea Cyr, by questioning the timing of the fatal injury. The State therefore needed the jury to hear and see Appellant's confessions to

beating and kicking B.C. to prove her culpability for injury to a child and felony murder. This case was tried as a capital murder. Considering that, the amount of time the State needed to develop the challenged evidence was short. We hold that the trial court did not abuse its discretion by admitting the challenged videos. *See Hartis v. State*, 183 S.W.3d 793, 802 (Tex. App.—Houston [14th Dist.] 2005, no pet.); *Lopez v. State*, No. 03-02-00453-CR, 2003 WL 1922430, at *5–6 (Tex. App.—Austin Apr. 24, 2003, no pet.) (mem. op., not designated for publication).

4. Resolution of Rule 403 Complaints

Having held that the trial court did not abuse its discretion by admitting the twenty-three challenged exhibits of the State, we overrule Appellant's "unfair prejudice" complaints in Points Three through Seven, and we overrule Points Three, Four, Five, Six, and Seven in their entirety.

V. Conclusion

Having overruled Appellant's seven points, we affirm the trial court's judgment.

/s/ Mark T. Pittman
MARK T. PITTMAN
JUSTICE

PANEL: SUDDERTH, KERR, and PITTMAN, JJ.

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Tex. R. App. P. 47.2(b)

DELIVERED: August 24, 2017