TEXAS COURT OF APPEALS, THIRD DISTRICT, AT AUSTIN

NO. 03-14-00570-CR

Eric Byron Crayton, Appellant

v.

The State of Texas, Appellee

FROM THE DISTRICT COURT OF COMAL COUNTY, 207TH JUDICIAL DISTRICT
NO. CR-2012-225, HONORABLE JACK H. ROBISON, JUDGE PRESIDING

M E M O R A N D U M O P I N I O N

Appellant Eric Byron Crayton was charged by indictment with murder and tampering with physical evidence. *See* Tex. Penal Code §§ 19.02, 37.09. Following the trial court's denial of appellant's motion to suppress, a jury acquitted appellant of murder and convicted him of tampering with physical evidence. Appellant pleaded "true" to enhancement paragraphs alleging two prior felony convictions, and the jury assessed punishment at thirty-five years' imprisonment. *See id.* §§ 12.34, 12.42. In four issues, appellant challenges the trial court's denial of his motion to suppress and the sufficiency of the evidence to support his conviction for tampering with physical evidence. We will affirm the trial court's judgment of conviction.

BACKGROUND

The record shows that on January 19, 2012, appellant became involved in an altercation with a man named Thomas Kitto that resulted in Kitto's death. Kitto's girlfriend testified

about the events leading up to the altercation. She testified that she and Kitto lived in two of a series of cabins in a recreational-vehicle park and that Kitto was sitting at a picnic table outside his cabin with some friends while she napped inside her cabin that afternoon. Her testimony and statements that she made to police during the investigation that were admitted into evidence show that she received a text message from appellant, who had been her friend for several years, after she awoke from her nap. In the text message, appellant asked her if she could meet him to discuss a problem he was having related to his girlfriend. She was planning to go to a convenience store to buy cigarettes and agreed to meet him there. After they spoke briefly at the convenience store, they then drove in separate cars back to her cabin at the RV park because appellant wanted to speak to her further.

Appellant arrived first and stayed in his car waiting for her. When she arrived, they both began walking toward her cabin together. She testified that as she and appellant approached her cabin, she heard Kitto running toward appellant. She testified that Kitto was "hollering" at appellant and that Kitto "picked [appellant] up and threw him down." She testified that appellant was "trying to figure out what was happening" and trying to get back up when Kitto "hit him again, very hard." Her testimony about what occurred next conflicts with the statements she made to police shortly after the incident, but in either case, she stated that she ultimately saw Kitto with stab wounds before he fell to the ground and before appellant left the scene.[1] A medical examiner who conducted

[1] The conflicts between Kitto's girlfriend's statements to police and her testimony at trial are not relevant to any of the issues raised on appeal.

an autopsy on Kitto's body testified that there were six stab wounds on the body and that Kitto died of his injuries.

A friend of Kitto's who had been sitting with Kitto at the picnic table before the altercation occurred was interviewed by police after the incident occurred, and his videotaped interview was admitted into evidence at trial. He stated that Kitto had been drinking whiskey that night, and that when appellant and Kitto's girlfriend walked toward her cabin, Kitto got up, said "What's up with this shit," and knocked appellant down. He stated that appellant tried to stand back up, and then Kitto "went for him again." The friend then acted out what he saw appellant do next, demonstrating a lunging, stabbing motion. He stated that appellant then backed away, went to his car, and left. He stated that Kitto said, "I think he got me," and "I need help," and then fell to the ground.[2]

Police officers and detectives arrived at the scene, and a sheriff's deputy testified that he was assigned the task of trying to locate appellant at appellant's known address. The deputy testified that he subsequently drove past appellant's house and observed a truck in the driveway. He then parked in a driveway adjacent to appellant's house. Eventually, he saw the truck from appellant's driveway driving away, and he followed it and conducted a traffic stop. He asked the driver, who was later identified as appellant, to put his hands on the patrol car's hood, and appellant complied. The deputy testified that before he could handcuff appellant, appellant said, "Fuck that.

[2] Kitto's motive for starting the altercation is not entirely clear from the record, especially because the evidence shows that he and appellant either did not know each other at all or barely knew each other before the fight, but there is evidence that he was intoxicated at the time of the fight and evidence suggesting that he was jealous that his girlfriend was spending time with appellant.

I'm not going back," and ran away. The deputy chased him, tackled him, and placed him under arrest. Detectives later interrogated appellant, and appellant admitted that he stabbed Kitto after Kitto attacked him, that he used a knife he kept in a sheath in his back pocket, that he dropped the sheath at the scene, and that he "got rid of" the knife by throwing it from his car window near a creek.

The State charged appellant with murder and tampering with physical evidence, and a jury acquitted him of murder based on a self-defense claim and convicted him of tampering with physical evidence. After appellant pleaded "true" to two felony enhancement allegations, the jury assessed punishment at thirty-five year's imprisonment, and the trial court imposed sentence. This appeal followed.

DISCUSSION

Appellant raises two issues regarding the trial court's denial of his motion to suppress and two issues regarding the sufficiency of the evidence to support his conviction for tampering with physical evidence. We will address each of the issues below.

Motion to Suppress

In his first two issues, appellant contends that the trial court erred in denying his motion to suppress a recorded statement he provided to police because, he argues, (1) the statement did not comply with article 38.22 of the Texas Code of Criminal Procedure, and (2) he invoked his right to remain silent. We review a trial court's ruling on a motion to suppress under an abuse of discretion standard. *Crain v. State*, 315 S.W.3d 43, 48 (Tex. Crim. App. 2010). In doing so, we

view the evidence in the light most favorable to the trial court's ruling. *Johnson v. State*, 414 S.W.3d 184, 192 (Tex. Crim. App. 2013). We give deference to the trial court's determination of historical facts, especially if those are based on an assessment of credibility and demeanor. *Arguellez v. State*, 409 S.W.3d 657, 662 (Tex. Crim. App. 2013). We afford the same deference to rulings on application of the law to questions of fact and to mixed questions of law and fact if resolution of those questions depends on an assessment of credibility and demeanor of witnesses. *Id*. We review de novo pure questions of law and mixed questions of law and fact that do not depend on evaluating credibility and demeanor. *Martinez v. State*, 348 S.W.3d 919, 923 (Tex. Crim. App. 2011).

A. Article 38.22

Appellant contends that one of the recorded statements he made to police did not comply with the requirements of article 38.22 of the Texas Code of Criminal Procedure because the article 38.22 warnings were contained only within a prior recording and not within the recording at issue. Article 38.22 of the code of criminal procedure sets forth procedural safeguards for securing the accused's privilege against self-incrimination in criminal proceedings. *Joseph v. State*, 309 S.W.3d 20, 23 (Tex. Crim. App. 2010) (citing Tex. Code Crim. Proc. art. 38.22). Included within those safeguards is the prohibition against admission of any oral statement that the accused made during custodial interrogation unless the statement was recorded and, before the statement but during the recording, the accused was warned of his rights and knowingly, intelligently, and voluntarily waived those rights. *Id*. at 23–24; *see* Tex.Code Crim. Proc. art. 38.22, § 3. Article 38.22 warnings must advise the accused 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.

Tex. Code Crim. Proc. art. 38.22, § 2; *Joseph*, 309 S.W.3d at 24; *see Miranda v. Arizona*, 384 U.S. 436, 444 (1966). Admissibility of an accused's custodial-interrogation statement requires both the article 38.22 warnings and a waiver. *See Joseph*, 309 S.W.3d at 24. The State bears the burden of establishing a valid waiver of *Miranda* rights by a preponderance of the evidence. *Leza v. State*, 351 S.W.3d 344, 349 (Tex. Crim. App. 2011).

Here, the record contains three separate recordings of appellant's interactions with detectives at the sheriff's office after he was arrested. The first is an audiotape from the night of appellant's arrest, the second is a videotape that began shortly after the audiotape finished, and the third is a videotape from an interrogation the following day.[3] The first detective who met with appellant on the night of appellant's arrest testified that he initially put a videotape in the video-recording equipment and an audio recorder in his shirt pocket to record the interview. The detective testified that he spoke with appellant, read him his *Miranda* rights twice, took photos of

[3] Appellant does not raise an issue regarding the first or third recordings. The only recording at issue is the second one.

him, collected his clothes, and made "idle conversation" with him. He testified that this initial interaction lasted about forty minutes before he left the room to speak with an analyst about a different case. He testified, and the audiotape confirms, that he did not question appellant about the charges of murder or tampering with physical evidence during that time. He testified that he did not do so because he did not know anything about the details of the investigation and was waiting for the arrival of a second detective who had the relevant information. After the detective left the interview room to talk to the analyst, he realized that the video-recording equipment had not been working, so he inserted another disk into the equipment and started it again. Thus, the initial forty minutes of the detective's discussion with appellant was on audiotape only. The detective further testified that he returned to the interview room after he started the second videotape, and he continued to wait for the second detective to arrive.

The videotape shows that once the second detective arrived, the second detective began interviewing appellant, and the first detective stayed in the interview room during the questioning. The statement made during this videotaped portion of the detective's interaction with appellant is the statement challenged by appellant here. He points out that there are two separate recordings (the audiotaped portion with the first detective and the videotaped portion with both detectives), that there was a break between the two recordings, and that the *Miranda* warnings were provided only during the first recording and not the second.

When a break in questioning occurs after a suspect is warned about his *Miranda* rights and then questioning resumes without new *Miranda* warnings, the *Miranda* warnings administered in the first interview remain effective as to admissions made during the second

interview if, in the totality of the circumstances, the second interview is essentially a continuation of the first. *See, e.g.*, *Bible v. State*, 162 S.W.3d 234, 241–42 (Tex. Crim. App. 2005); *Stallings v. State*, No. 09-09-00200-CR, 2010 WL 2347244, at *2–3 (Tex. App.—Beaumont June 9, 2010, pet. ref'd) (mem. op., not designated for publication); *Spears v. State*, No. 05-06-00691-CR, 2007 WL 2447233, at *3–4 (Tex. App.—Dallas Aug. 30, 2007, no pet.) (not designated for publication). In making this determination, we consider (1) the passage of time, (2) whether the second interrogation was conducted by a different person, (3) whether the interrogation related to a different offense, and (4) whether the officer reminded the defendant of his earlier warnings. *See Bible*, 162 S.W.3d at 242.

The record in this case shows that the first detective initially began speaking with appellant at approximately 10:40 p.m. on the night of appellant's arrest. The audiotape admitted into evidence at the hearing on appellant's motion to suppress shows that approximately eight minutes after the initial interview began, the detective read appellant his *Miranda* warnings and asked him if he understood them. Appellant answered in the affirmative and indicated that he was willing to talk to the detective. At approximately 11:03 p.m., the detective again read appellant his *Miranda* warnings, asked him if he understood each of them, and asked him to write his initials next to each warning if he understood them and to sign the document if he wanted to waive his rights. Appellant verbally indicated on the audiotape that he understood each of the warnings and was willing to talk to the detective, and a document admitted into evidence shows that he wrote his initials next to each of the warnings and signed an acknowledgment waiving his rights. The audiotaped portion ended at approximately 11:20 p.m.

Approximately thirty minutes after that, the videotaped portion of the interview (after the detective fixed the malfunctioning video recorder) began. The videotape shows that the first detective sat in the room with appellant for several minutes without talking. Then, at approximately 11:56 p.m., the second detective joined them in the room and began interrogating appellant. The first detective testified that the second detective twice asked him before the interrogation began whether appellant had been advised of his *Miranda* rights, and the first detective confirmed that he had advised appellant of his rights and that appellant had waived them.

In considering the first factor—the passage of time—the foregoing evidence indicates that there was approximately fifty-five minutes between the time at which the detective advised appellant of his *Miranda* rights (for the second time) and the time at which the second detective began the interrogation. Regarding the second factor—whether the second interrogation was conducted by a different person—the audiotaped interaction shows that the first detective did not discuss the charges of murder or tampering with physical evidence and did not question appellant about any other possible charges. The record further shows that the detective took photos of appellant, read him his rights, collected his clothes, and informed him that he was waiting for the second detective to arrive before proceeding. He asked appellant questions periodically, such as "What happened tonight?," but he did not press appellant, and most of the conversation between the two of them was irrelevant to the investigation. We further note that the first detective stayed in the interview room with appellant and the second detective after the second detective began interrogating appellant.

In considering the third factor—whether the interrogation related to a different offense—as stated above, the record shows that the first detective periodically asked appellant open-ended questions while he sat with him but that he did not address the murder or tampering-with-evidence charges or ask any questions about other possible charges. Rather, he asked questions such as "What happened tonight?" "Anything else going on tonight?" "What did you do this morning?" and "Anything else you need to tell me?" In response to the questions about what happened that evening, appellant discussed only the events surrounding his arrest. He stated that he had been driving and was "a little inebriated." He stated that he had been drinking "a little bit of vodka." He further stated that he "took off running" when the officer tried to arrest him. The record shows that the detective's questions were minimal and spread out among other interactions, including routine check-in procedures (reading appellant his *Miranda* rights, taking photographs, collecting appellant's clothes), statements that he was waiting for another detective to do the interview ("We're going to be here for a while, get as comfortable as you can," "Someone else is coming to talk to you," and "We'll just kind of chill"), and general conversation that was irrelevant to the charges being investigated ("How long have you been living here?" and "Where are you from?"). Regarding the final factor—whether the officer reminded the defendant of the earlier *Miranda* warnings—there is no dispute that the second detective did not do so.

Given the line of cases on this issue, and given the evidence in this case as set forth within our analysis of the factors above—including evidence that the first detective did not interrogate appellant about the charges being investigated but rather did routine check-in procedures, waited for the second detective, and asked a small number of open-ended questions; that the

detective read appellant his *Miranda* rights twice; that appellant indicated both times that he understood the warnings and waived them; that the first detective informed appellant that a second detective would be interrogating him; that only fifty-five minutes passed between the second reading of appellant's *Miranda* warnings and the later interrogation; that appellant stayed in the same interview room the entire time; and that the first detective stayed in the interview room during the second detective's interrogation of appellant—we conclude that the second recorded statement was a continuation of the first audiotaped interaction and that new *Miranda* warnings were not required at the beginning of the second recording. *See id.* at 241–42; *Newson v. State*, No. 05-14-01455-CR, 2015 WL 7302525, at *4–5 (Tex. App.—Dallas Nov. 19, 2015, no pet.) (mem. op., not designated for publication); *Cotten v. State*, No. 08-13-00051-CR, 2013 WL 6405511, at *4–5 (Tex. App.—El Paso Dec. 4, 2013, pet. ref'd) (not designated for publication); *Stallings*, 2010 WL 2347244, at *2–3; *Spears*, 2007 WL 2447233, at *3–4; *Burruss v. State*, 20 S.W.3d 179, 183–84 (Tex. App.—Texarkana 2000, pet. ref'd); *Franks v. State*, 712 S.W.2d 858, 860–61 (Tex. App.—Houston [1st Dist.] 1986, pet. ref'd).

We note that appellant argues that he was intoxicated at the time that he received his *Miranda* warnings and that we should take his level of intoxication into account in analyzing the first factor (the passage of time) above.[4] The audiotaped portion of the detective's interaction with appellant shows that appellant admitted that he was "a little inebriated" and had "a little bit of

[4] Appellant does not argue that his alleged intoxication on the night of his arrest rendered his waiver of his *Miranda* rights involuntary; he argues only that his alleged intoxication should be taken into consideration in determining whether he should have received a new set of *Miranda* warnings when the second recording began.

vodka" before he drove that night. He further stated that he was "drunk and took off running" after the officer pulled him over. The record also shows that both the first and second detectives believed that appellant was intoxicated to some extent on the evening of the interrogation, but they both indicated that they had interacted with him on several prior occasions, that he was always intoxicated when they interacted with him, and that he was functional on the prior occasions and on the night in question. Specifically, the first detective stated that he had known appellant "for several years" and that appellant "was intoxicated [on the night of his arrest], but he wasn't any more intoxicated than he normally was." The trial judge asked, "And he is always intoxicated when you have been around him?" The detective responded, "Every time I have ever been around him, yes." The second detective stated that appellant "appeared that he had been drinking" and that he had "seen [appellant] numerous times intoxicated." He further stated that he "would classify [appellant] as probably a functioning alcoholic. He could function and everything. He drank a lot all the time, but he could function." Both detectives testified that appellant was responsive to their questions, able to communicate, and able to understand what they were communicating to him.

In the trial court's findings of fact and conclusions of law, the court found that appellant "displayed the ability to intelligently discuss multiple different subjects and past events," that he "demonstrated control over his mental [and] physical faculties," that he "demonstrated an understanding of his circumstances and the consequences of his decisions . . . even saying at one point that he believed waiving his rights would be 'better for [his] case,'" and that he "was not rendered incapable of making an independent, informed decision to confess." A review of the record supports the trial court's findings and conclusions. Even assuming that appellant was intoxicated

to some degree after he was taken into custody, given the circumstances in this case as set forth above, we cannot conclude that the alleged intoxication required a third reading of his *Miranda* warnings at the beginning of the second recording.

Because we have determined that the second recording in this case was a continuation of the first, we conclude that the trial court did not err in denying appellant's motion to suppress on this basis. Accordingly, we overrule appellant's first issue.

B. Invocation of Right to Remain Silent

In his second issue, appellant contends that the trial court should have granted his motion to suppress on the basis that he invoked his right to remain silent several times during his interrogation. The Fifth Amendment to the United States Constitution provides that no person shall be compelled in any criminal case to be a witness against himself. *See Ramos v. State*, 245 S.W.3d 410, 418 (Tex. Crim. App. 2008); *Herrera v. State*, 241 S.W.3d 520, 525 (Tex. Crim. App. 2007) (citing U.S. Const. amend. V). Consistent with this Fifth-Amendment guarantee, law enforcement officials, before questioning a person in custody, must inform him that he has the right to remain silent and that any statement he makes may be used against him in court. *Miranda*, 384 U.S. at 444; *Ramos*, 245 S.W.3d at 418. If the individual in custody indicates in any manner, at any time prior to or during questioning, that he wishes to remain silent, the interrogation must cease. *Miranda*, 384 U.S. at 473–74; *Ramo*s, 245 S.W.3d at 418. The suspect is not required to use any particular word or phrase to invoke the right to remain silent. *See Ramos*, 245 S.W.3d at 418. However, an interrogating officer is not required to terminate his questioning unless the suspect's invocation of his rights is unambiguous. *Id*. Further, a police officer is permitted, but not required,

to clarify a suspect's wishes when faced with an ambiguous invocation of the right to remain silent. *Kupferer v. State*, 408 S.W.3d 485, 489 (Tex. App.—Houston [1st Dist.] 2013, pet. ref'd). Courts must look to the totality of the circumstances in determining whether the right to remain silent was unambiguously invoked. *Id*.; *Williams v. State*, 257 S.W.3d 426, 433 (Tex. App.—Austin 2008, pet ref'd). Ambiguity exists when the suspect's statement is subject to more than one reasonable interpretation under the circumstances. *Kupferer*, 408 S.W.3d at 489; *Williams*, 257 S.W.3d at 433.

Even if courts find error, the violation of appellant's Fifth Amendment right to remain silent is constitutional error subject to the harm analysis set forth in Texas Rule of Appellate Procedure 44.2(a). *See Ramos*, 245 S.W.3d at 419; *Rodriguez–Flores v. State*, 351 S.W.3d 612, 630 n.26 (Tex. App.—Austin 2011, pet. ref'd). Under Rule 44.2(a)'s harmless-error analysis, we must reverse the judgment unless, after reviewing the record as a whole, we determine "beyond a reasonable doubt that the error did not contribute to the conviction or punishment." *See* Tex. R. App. P. 44.2(a); *Clay v. State*, 240 S.W.3d 895, 904 (Tex. Crim. App. 2007). Constitutional error does not contribute to the conviction or punishment if the jury's verdict would have been the same if the erroneous evidence had not been admitted. *See Clay*, 240 S.W.3d at 904; *Nordstrom v. State*, No. 03-12-00012-CR, 2014 WL 1910277, at *3 (Tex. App.—Austin May 8, 2014, no pet.) (mem. op., not designated for publication). Although not exclusive, factors to consider in the harm analysis include the nature of the error, whether it was emphasized by the State, the probable implications of the error, and the weight the jury would likely have assigned to it in the course of its deliberations. *Snowden v. State*, 353 S.W.3d 815, 822 (Tex. Crim. App. 2011); *Nordstrom*, 2014 WL 1910277, at *4.

At the hearing on appellant's motion to suppress, he argued that he invoked his right to remain silent numerous times when he made statements such as "I'm done with this," and "No, I'm done," "I'm not telling you nothing more," and "Quit talking to me, and just take me to jail now." The trial court found that the initial statements were not invocations of appellant's right to remain silent given the context in which they were made but that the final statement—"Quit talking to me, and just take me to jail now"—was an invocation of his right to remain silent. Consequently, the trial court granted appellant's motion to suppress with respect to the statements appellant made during the portion of the interrogation that occurred after that particular statement.

On appeal, appellant contends that the trial court erred "in admitting into evidence anything on the videotape after the point [appellant] invoked his right to terminate questioning." However, even assuming, without deciding, that the trial court erred in admitting the portion of the interrogation that occurred after the initial challenged statement, the error, if any, would be harmless. To begin with, the first statement that appellant alleges was an invocation of his right to remain silent did not occur until after he made extensive admissions regarding the charge of tampering with physical evidence. Specifically, appellant stated that he "poked" Kitto with a knife, that the knife had been in appellant's back pocket, that he "got rid of" the knife, that he "threw it away," that he "threw it on the road on Sorrell Creek," that he "chucked it out the window around Sorrell Creek," that he got rid of the knife because he "felt like there was a little bit of fault" because he "probably shouldn't have stabbed [Kitto]," that the knife was a folding knife in a sheath, and that he dropped the sheath when he pulled out the knife.

In addition, the record contains other evidence regarding the existence and subsequent disposal of a knife. Kitto's girlfriend testified that she saw appellant pull a knife from a sheath at his hip during the fight and that she subsequently saw stab wounds on Kitto. A sergeant testified that a knife sheath was found on the ground at the scene, which was further demonstrated by photos of the scene admitted into evidence. In the videotaped interview of one of the eyewitnesses to the fight between appellant and Kitto, the eyewitness stated that he saw appellant lunge at Kitto. As he described what he saw, he demonstrated a lunge with a stabbing motion. He stated that he could not see where appellant pulled the knife from. The medical examiner testified that Kitto had six stab wounds on his body, two of which alone would have been fatal. A detective testified that police did not find a knife during a search of appellant's home after appellant was arrested, and there is no dispute that appellant did not have a knife in his possession at the time of his arrest. Given the harmless-error standard applicable to this case, and given the evidence showing that appellant possessed and then disposed of a knife after stabbing Kitto with it and that appellant made a multitude of admissions regarding the knife and disposing of the knife before he made any statements that he alleges were an invocation of his right to remain silent, we must conclude beyond a reasonable doubt that even assuming, without deciding, that the trial court erred in declining to suppress statements appellant made during the portion of the interrogation after appellant's first alleged invocation of his right to remain silent ("I'm done with this"), the error, if any, did not contribute to appellant's conviction. *See* Tex. R. App. P. 44.2(a); *Snowden*, 353 S.W.3d at 822; *Clay*, 240 S.W.3d at 904; *Nordstrom*, 2014 WL 1910277, at *4.

We also conclude that the error, if any, did not contribute to appellant's punishment. The State did not present evidence or argument regarding appellant's interrogation at any point during the punishment phase. Rather, the only evidence and arguments presented by the State involved appellant's criminal history, which included convictions for burglary of a habitation, deadly conduct, unlawful possession of a firearm by a felon, possession of a controlled substance, evading arrest, resisting arrest, driving while intoxicated, possession of marijuana, and theft by check. As stated above, appellant pleaded "true" to the two felony convictions—burglary of a habitation and unlawful possession of a firearm by a felon—which consequently required a prison sentence for the conviction at issue that ranged from twenty-five years to life. *See* Tex. Penal Code § 12.42(d). The jury assessed punishment at thirty-five years' imprisonment. Considering the evidence showing that appellant had a lengthy criminal record, including two felony convictions that subjected him to a minimum of twenty-five years' imprisonment; that even with the lengthy criminal record, the jury assessed punishment at the lower end of the applicable sentencing range; and that the State did not address appellant's interrogation or his statements in any way during the punishment phase, we conclude that the error, if any, did not contribute to appellant's punishment. *See* Tex. R. App. P. 44.2(a); *Snowden*, 353 S.W.3d at 822; *Clay*, 240 S.W.3d at 904; *Nordstrom*, 2014 WL 1910277, at *4.

Having concluded that an error, if any, did not contribute to appellant's conviction or punishment, we overrule appellant's second issue.

Sufficiency of the Evidence

In his third and fourth issues, appellant contends that the evidence is insufficient to support his conviction for tampering with physical evidence because (1) there is insufficient evidence to prove that he had the requisite knowledge that an investigation was pending or in progress or that an offense had been committed at the time that he disposed of the knife, and (2) the evidence fails to satisfy the corpus-delicti rule because, he argues, there is no evidence other than appellant's confession establishing that the offense of tampering with evidence occurred. We will address each issue below.

A. General sufficiency challenge

When reviewing the sufficiency of the evidence to support a conviction, we consider all the evidence in the light most favorable to the verdict to determine whether, based on that evidence and the reasonable inferences that can be drawn from it, any rational trier of fact could have found the essential elements of the offense beyond a reasonable doubt. *Jackson v. Virginia*, 443 U.S. 307, 319 (1979); *Temple v. State*, 390 S.W.3d 341, 360 (Tex. Crim. App. 2013). In our analysis, we assume that the trier of fact resolved conflicts in the testimony, weighed the evidence, and drew reasonable inferences in a manner that supports the verdict. *Jackson*, 443 U.S. at 319; *Isassi v. State*, 330 S.W.3d 633, 638 (Tex. Crim. App. 2010). We consider only whether the jury reached a rational decision. *See Isassi*, 330 S.W.3d at 638 ("Our role on appeal is restricted to guarding against the rare occurrence when a factfinder does not act rationally." (quoting *Laster v. State*, 275 S.W.3d 512, 517 (Tex. Crim. App. 2009))).

Legal sufficiency of the evidence is measured by the elements of the offense as defined by a hypothetically correct jury charge. *See Thomas v. State*, 444 S.W.3d 4, 8 (Tex. Crim. App. 2014) (citing *Malik v. State*, 953 S.W.2d 234, 240 (Tex. Crim. App. 1997)). "A hypothetically correct jury 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 unnecessarily restrict the State's theories of liability, and adequately describes the particular offense for which the defendant was tried.'" *Id*. (quoting *Malik*, 953 S.W.2d at 240). 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 indictment. *See Daugherty v. State*, 387 S.W.3d 654, 665 (Tex. Crim. App. 2013).

The statute under which appellant was convicted for tampering with physical evidence states the following, in relevant part:

> (a) A person commits an offense if, knowing that an investigation or official proceeding is pending or in progress, he:
>
> > (1) alters, destroys, or conceals any record, document, or thing with intent to impair its verity, legibility, or availability as evidence in the investigation or official proceeding.
>
> . . . .
>
> (d) A person commits an offense if the person:
>
> > (1) knowing that an offense has been committed, alters, destroys, or conceals any record, document, or thing with intent to impair its verity, legibility, or availability as evidence in any subsequent investigation of or official proceeding related to the offense.

Tex. Penal Code § 37.09. In separate paragraphs of the indictment in this case, the State alleged two alternative theories of the offense that correspond with subsections (a) and (d) above, and the application paragraph in the jury charge permitted the jury to convict appellant of tampering with physical evidence under either of the two theories.

Appellant challenges the sufficiency of the evidence to support only the knowledge components of each of the two theories: that he had knowledge that an investigation or official proceeding was pending or in progress or that he had knowledge that an offense had been committed when he disposed of the knife. Considering all the evidence in the record in the light most favorable to the verdict, as we must, we conclude that the evidence is sufficient to support a conviction under the second theory: that appellant knew that an offense had been committed when he disposed of the knife. *See id.* § 37.09(d)(1). Appellant contends that the evidence is insufficient to support a conviction under this theory because he always maintained that he acted in self-defense, because "it is not an offense to use self-defense or deadly force in defense of a person," and because "the use of lawful force to defend himself from Kitto's unlawful attack did not constitute an offense of which Crayton should have been aware." In support of his argument, he cites to general penal-code provisions. *See id.* §§ 1.07(a)(22)(A) (defining "element of offense"), 6.03(b) (defining "knowingly" and "with knowledge"), 9.02 (stating that "[i]t is a defense to prosecution that the conduct in question is justified under this chapter"), 9.31 (setting forth parameters of self-defense), 9.32 (setting forth parameters of use of deadly force in defense of person).

We note at the outset that appellant's argument that "the use of lawful force to defend himself from Kitto's unlawful attack did not constitute an offense of which Crayton should have

been aware" is not an accurate statement of the law. Self-defense is a justification to an offense, not something that makes the underlying conduct no longer constitute an offense. *See id.* §§ 9.02, 9.31, 9.32; *Alonzo v. State*, 353 S.W.3d 778, 781 (Tex. Crim. App. 2011) (self-defense is justification to offense); *Juarez v. State*, 308 S.W.3d 398, 401–04 (Tex. Crim. App. 2010) (justification defenses are based on confession-and-avoidance doctrine, requiring defendant to admit to all elements of underlying offense); *Shaw v. State*, 243 S.W.3d 647, 659 (Tex. Crim. App. 2007) ("It is a defense to criminal responsibility . . . if the criminal 'conduct' is 'justified.' This justification, by definition, does not negate any element of the offense, including culpable intent; it only excuses what would otherwise constitute criminal conduct."). Thus, the jury's decision to acquit appellant of murder based on self-defense does not mean that the murder did not occur; it means only that appellant claimed, and the jury decided, that the murder was justified.[5] *See Juarez*, 308 S.W.3d at 401–04; *Shaw*, 243 S.W.3d at 659.

Further, the record contains considerable evidence supporting a finding that appellant had knowledge that he committed an offense at the time that he disposed of the knife, and the general penal-code provisions cited by appellant do not change the sufficiency analysis in this case. To begin with, appellant made specific admissions in the following exchange when asked why he threw away the knife and ran away from a police officer:

Detective: Why would you throw your good knife away?

[5] The record shows that appellant requested, and the State did not oppose, the inclusion of a self-defense instruction in the jury charge.

Appellant:	I didn't think it was a good thing to do, but the dude attacked me, and I didn't know what to do, so I stabbed him.
Detective:	I understand that, I'm not talking about that, I'm talking about . . .
Appellant:	Why did I get rid of it? I just got rid of it. I'm just like . . . I don't know, dude, I freaked out.
Detective:	So is that why you ran later?
Appellant:	I felt like maybe there was a little fault there. I probably shouldn't have stabbed him, but I did freak out when he came at me.

In addition, appellant admitted several times that he did in fact dispose of the knife—stating that he "got rid of it," "threw it away," "threw it on the road on Sorrell Creek," and "just chucked it out the window right on Sorrell Creek"—and the jury could have inferred from his decision to dispose of the knife that he did so because he knew he had used it to commit an offense. *See Hooper v. State*, 214 S.W.3d 9, 13 (Tex. Crim. App. 2007) ("Circumstantial evidence is as probative as direct evidence in establishing the guilt of an actor, and circumstantial evidence alone can be sufficient to establish guilt."). Likewise, the evidence showing that appellant attempted to evade arrest later that evening by running from the arresting officer is also circumstantial evidence that could support a finding that appellant knew he had committed an offense at the time that he disposed of the knife. *See id.*

We further note that there is no requirement that appellant knew at the time that he disposed of the knife that his actions had caused Kitto's death rather than merely causing him injury. The statute requires only that he knew at the time that he disposed of the knife that "an offense" had been committed, *see* Tex. Penal Code § 37.09(d)(1), and the evidence shows that he stabbed Kitto

and admitted that he "thought there was a little fault there" and "probably shouldn't have done so." There is no dispute that stabbing another person with a knife, even if the person does not die from the stab wounds, constitutes an offense under the penal code. *See id.* §§ 22.01 (setting forth elements of assault), 22.02 (setting forth elements of aggravated assault). Even though a jury later found that appellant acted in self-defense, we explained above that self-defense does not negate the fact that an offense occurred, and we also look only to the evidence of appellant's knowledge at the time that he disposed of the knife. *See id.* § 37.09(d)(1).

Considering all the evidence in the light most favorable to the verdict—including Kitto's death from stab wounds; appellant's admission that he stabbed Kitto, which constituted a murder after Kitto's death; appellant's admissions that he disposed of the knife and that he did so because he felt like he bore some of the fault and should not have stabbed him; and appellant's attempt to evade arrest by running from the arresting officer—and considering the reasonable inferences that can be drawn from that evidence, we conclude that a rational jury could have found beyond a reasonable doubt that appellant knew that an offense had been committed when he disposed of the knife and that he disposed of the knife and attempted to evade capture because he knew he would likely be subjected to prosecution based on that offense. *See Jackson*, 443 U.S. at 319; *Temple*, 390 S.W.3d at 360. Because we conclude that the evidence is sufficient to support a determination that an offense was committed and that appellant knew at the time that he disposed of the knife that an offense had been committed, we overrule appellant's third issue.

B. Corpus-Delicti Rule

The corpus-delicti rule concerns a matter that is related to evidentiary sufficiency and applies in cases involving an extrajudicial confession. *Miller v. State*, 457 S.W.3d 919, 924 (Tex. Crim. App. 2015); *Carrizales v. State*, 414 S.W.3d 737, 743–44 (Tex. Crim. App. 2013). The corpus-delicti rule requires evidence outside the defendant's confession to establish that the defendant was guilty of the crime of which he was convicted. *Salazar v. State*, 86 S.W.3d 640, 645 (Tex. Crim. App. 2002). In other words, the corpus-delicti doctrine requires that evidence independent of a defendant's extrajudicial confession show that the "essential nature" of the charged crime was committed by someone. *Carrizales*, 414 S.W.3d at 743. The purpose of the rule is to ensure no person is convicted of a crime that never occurred, based solely on his own false confession. *Miller*, 457 S.W.3d at 924. The requisite independent evidence need not be sufficient by itself to prove the offense; it need only be some evidence that renders the commission of the offense more probable than it would be without the evidence. *Rocha v. State*, 16 S.W.3d 1, 4 (Tex. Crim. App. 2000). Under the corpus-delicti rule, we consider all the record evidence—other than appellant's extrajudicial confession—in the light most favorable to the jury's verdict to determine whether that evidence tended to establish that an offense occurred. *See Fisher v. State*, 851 S.W.2d 298, 303 (Tex. Crim. App. 1993). The State may prove the corpus delicti by circumstantial evidence. *See McDuff v. State*, 939 S.W.2d 607, 623–24 (Tex. Crim. App. 1997).

A review of the evidence other than appellant's confession begins with statements from the eyewitnesses to the altercation between appellant and Kitto. Kitto's girlfriend testified that after Kitto attacked appellant, she saw appellant pull a knife out of a sheath at his hip. She

described the knife as a fixed-blade knife with "leather wrapping" on the handle, with "a guard for the hand," and with an oddly-shaped blade. She testified that she drew a picture of the knife for detectives two months after the incident occurred. The drawing was admitted into evidence at trial. She testified that after she saw appellant with the knife, she saw Kitto take his shirt off, and she observed a "very deep cut on [Kitto's] chest." A friend of Kitto's who was present during the altercation told police in a videotaped statement admitted into evidence that he did not see where appellant pulled the knife from but that he saw appellant lunge at Kitto after Kitto attacked appellant. The witness made a lunging, stabbing motion when he described what he saw to the police. He stated that he heard a "gushing" sound from Kitto and that Kitto stood still, said, "I need help," and fell to the ground. Both Kitto's girlfriend and friend stated that they then saw appellant back away, get into his car, and drive away.

A sergeant who responded to the scene after appellant departed testified that he found a knife sheath on the ground near Kitto's body. Multiple crime-scene photographs were admitted into evidence showing a knife sheath on the ground consistent with the sergeant's description. The sergeant further testified that the sheath was sent to a crime lab for testing and that the lab confirmed the presence of appellant's DNA on the sheath. The sergeant testified—consistent with crime-scene photographs admitted into evidence—that a pocket knife was found at the scene but that the knife was folded closed and lying on top of a pair of work gloves on a nearby picnic table, and there was no blood visible on the picnic table or the knife. A detective who also examined the scene testified that he could not find any other knives or sharp objects at the scene.

The sheriff's deputy who arrested appellant later in the evening on the night of the altercation testified that he was parked near appellant's home looking for appellant when he saw a truck in appellant's driveway begin driving down the road. He testified that he conducted a traffic stop, that appellant was driving the truck, that appellant attempted to evade arrest by running away, and that he ultimately tackled appellant and arrested him. There is no evidence that appellant possessed a knife at the time of his arrest or that a knife was found in the truck he was driving, which a detective testified was searched by officers pursuant to a search warrant. The detective further testified that officers also obtained a search warrant for appellant's residence and searched it. He testified that the investigators found bloody clothing in the house but did not find a knife. In addition, a medical examiner testified that Kitto had "six incised wounds of varying depths" on his body. He testified that the cause of Kitto's death was "sharp force injuries," and that two of the wounds alone would have been fatal. The sergeant who responded to the scene testified consistent with photos in evidence that there was a great deal of blood on and around Kitto's body.

Considering all of the evidence other than appellant's confession in the light most favorable to the verdict—including evidence that appellant pulled a knife out of a sheath and stabbed Kitto with it, that appellant left the scene after stabbing Kitto, that Kitto had six stab wounds on his body at the time of his death, that a sheath containing appellant's DNA was found on the ground near Kitto's body, that appellant returned to his home after leaving the scene, and that a knife was not found in appellant's possession, house, or car at the time of his arrest—we conclude that the evidence tends to establish that the crime of tampering with evidence occurred. *See* Tex. Penal Code § 37.09(d)(1); *Rocha*, 16 S.W.3d at 4 (requisite independent evidence need only be some evidence

that renders commission of offense more probable than it would be without evidence); *Fisher*, 851 S.W.2d at 303 (requisite independent evidence need only tend to establish that offense occurred). Because we conclude that the evidence is sufficient to satisfy the corpus delicti of tampering with physical evidence, we overrule appellant's fourth issue.

CONCLUSION

Having overruled all of appellant's issues, we affirm the trial court's judgment of conviction.

_____

Cindy Olson Bourland, Justice

Before Justices Puryear, Goodwin, and Bourland

Affirmed

Filed: October 14, 2016

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