NUMBER 13-16-00209-CR

COURT OF APPEALS

THIRTEENTH DISTRICT OF TEXAS

CORPUS CHRISTI – EDINBURG

ALBERT VILLARREAL, **Appellant,**

v.

THE STATE OF TEXAS, **Appellee.**

On appeal from the 28th District Court of Nueces County, Texas.

MEMORANDUM OPINION

Before Justices Contreras, Benavides and Longoria
Memorandum Opinion by Justice Longoria

Appellant Albert Villarreal was convicted of capital murder, murder, and injury to a child, all first-degree felonies. *See* TEX. PENAL CODE ANN. §§ 19.02(b)(1), 19.03(a)(8), 22.04 (West, Westlaw through Chapter 49, 2017 R.S.). By one issue, he argues that there was legally insufficient evidence to support his conviction for capital murder or murder. We affirm.

I. BACKGROUND

X.M. was six years old at the time of his death. X.M.'s biological mother is N.M. Child Protective Services removed X.M. and his siblings from N.M.'s care for a time before returning them to her. During that time period, N.M. began a relationship with Villarreal, who bears no familial relationship to any of N.M.'s children.

In November of 2014, N.M. and Villarreal were indicted together under a single cause number for capital murder, murder, and injury to a child, alleging that they caused the injuries that led to X.M.'s death. However, Villarreal filed a motion for severance from N.M.'s case, which the trial court granted. Both N.M. and Villarreal were re-indicted separately for the same offenses. On February 8, 2016, the trial court accepted N.M.'s guilty plea to injury to a child with a deadly weapon finding and sentenced her to thirty-five years' imprisonment; the other charges against N.M. were dropped. In exchange, she agreed to testify against Villarreal.

At Villarreal's trial, X.M.'s nine-year-old sister, A.R.,[1] testified that Villarreal hit X.M. "a lot" and that Villarreal choked him "lots of times." She also testified that her mother often beat X.M. for soiling his pants. She further testified that on August 26, 2014, N.M. and Villarreal slapped and hit X.M. with a switch all over his body before putting him in a corner crying. A.R. claimed that sometime afterward, she witnessed Villarreal pick X.M. up by the neck and slam his head into the refrigerator handle. According to A.R., X.M. slumped to the floor and never moved, talked, or blinked again after that point.

N.M. admitted to spanking X.M. with a switch on his buttocks and legs, but not his head, in addition to "hitting, biting, striking [X.M.] with a switch, and pinching [his]

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[1] Even though X.M. is deceased, we refer to all individuals by their initials in order to protect the privacy of A.R. *Cf.* TEX. R. APP. P. 9.8(b) (mandating the use of aliases in parental-rights termination cases).

testicles," all around the time of X.M.'s death. N.M. testified that she beat him so hard that he could not stand any longer and had to lean on objects to stay upright. However, she testified that she was in another room when she heard a "bang." When she went to the kitchen to investigate, she saw X.M. laying face up near the refrigerator and noticed that he was completely unresponsive. She checked for his pulse but could not feel it in his neck or wrist.

Sandra Pardo, the forensic nurse that photographed X.M.'s body during a head-to-toe examination, stated, "In my 22 years of nursing, this is the worst case I have seen." The medical examiner, Dr. Rey Fernandez, testified that he found approximately 233 bruises and 70 scrapes on X.M.'s body. He found evidence of blunt force trauma to his head, which caused tearing, bleeding, and swelling in the brain. He testified that X.M. died from experiencing "multiple blunt force injuries to the head" and from shock because of the blood loss from all his other injuries. He further testified that he would not expect to see a blood spray or blood spatter from the head injuries because the bleeding was mostly internal. He also testified that the injury to X.M.'s head was consistent with being struck with the bar on a refrigerator.

Villarreal was found guilty on all three counts. The State elected to proceed only on the capital murder charge, and the trial court assessed punishment at life in prison without parole. This appeal ensued.

II. Standard of Review and Applicable Law

> In determining whether the evidence is legally sufficient to support a conviction, a reviewing court must consider all of the evidence in the light most favorable to the verdict and determine whether, based on that evidence and reasonable inferences therefrom, a rational fact finder could have found the essential elements of the crime beyond a reasonable doubt.

Whatley v. State, 445 S.W.3d 159, 166 (Tex. Crim. App. 2014). It is not the State's burden to disprove "every conceivable alternative to the defendant's guilt"; the State must simply prove the essential elements of the crime beyond a reasonable doubt. *Temple v. State*, 390 S.W.3d 341, 363 (Tex. Crim. App. 2013). Thus, on appeal, we determine only if a reasonable jury could have found the essential elements of capital murder beyond a reasonable doubt. *See Whatley,* 445 S.W.3d at 166. Even the testimony of a single witness can be sufficient to support a felony conviction. *See Agullar v. State,* 468 S.W.2d 75, 77 (Tex. Crim. App. 1971); *Shah v. State,* 403 S.W.3d 29, 35 (Tex. App.—Houston [1st Dist.] 2012, pet. ref'd).

The legal sufficiency of evidence is measured against the elements of the offense as defined by a hypothetically correct jury charge. *Malik v. State*, 953 S.W.2d 234, 240 (Tex. Crim. App. 1997). Such a charge in this case would state that a person commits the offense of capital murder if the person intentionally or knowingly causes the death of an individual that is under ten years old. TEX. PENAL CODE ANN. § 19.03(a)(8).

The Texas Penal Code provides that "[a] person is criminally responsible if the result would not have occurred but for his conduct, operating either alone or concurrently with another cause, unless the concurrent cause was clearly sufficient to produce the result and the conduct of the actor clearly insufficient." *Id.* § 6.04(a) (West, Westlaw through Chapter 49, 2017 R.S.). When concurrent causes are present, the "but for" requirement is satisfied when either (1) the accused's conduct is sufficient by itself to have caused the harm; or (2) the accused's conduct coupled with another cause is sufficient to have caused the harm. *Robbins v. State,* 717 S.W.2d 348, 351 (Tex. Crim. App. 1986); *Wooten v. State*, 267 S.W.3d 289, 296 (Tex. App.—Houston [14th Dist.] 2008, pet. ref'd).

> The existence or nonexistence of a causal connection is a question for the jury's determination. The State is not required to prove beyond a reasonable doubt that the act alleged in the indictment alone caused the death. It is an established rule in homicides that if the act of the defendant alleged in the indictment contributed to the death of the deceased, he is responsible, though other contributing causes existed.

Fountain v. State, 401 S.W.3d 344, 358 (Tex. App.—Houston [14th Dist.] 2013, pet. ref'd) (internal citations omitted).

III. Discussion

On appeal, Villarreal does not challenge his conviction for injury to a child. Furthermore, we do not have jurisdiction to address that conviction or Villarreal's challenge of his murder conviction because the trial court did not pronounce punishments on either of those counts. *See Thompson v. State*, 108 S.W.3d 287, 290 (Tex. Crim. App. 2003) (holding that when a trial court fails to pronounce punishment on a conviction, the appellate court lacks jurisdiction with respect to the portion of the appeal challenging that conviction); *Meachum v. State*, 273 S.W.3d 803, 806 (Tex. App.—Houston [14th Dist.] 2008, order) (finding that when the defendant was convicted of sexual assault and indecency with a child and pronounced punishment on the sexual assault conviction but not for the indecency count, the appellate court lacked jurisdiction to address defendant's appellate issue concerning the indecency conviction). Therefore, we address Villarreal's remaining conviction of capital murder, for which the trial court did pronounce punishment.

Villarreal argues that there was insufficient evidence to show that he committed murder or capital murder, but he does not challenge his conviction for injury to a child. His main contention is that there was insufficient evidence to show that X.M. was alive at the time of the alleged final blow against the refrigerator. Witnesses agreed that there was no blood present at the scene. Villarreal contends that if X.M. were alive when his

head was allegedly slammed against the refrigerator, it would have spattered blood all over the refrigerator and the kitchen floor. Villarreal asserts that N.M.'s extensive history of abuse of X.M. finally took its toll and that X.M. had already died due to the effect of cumulative blows from N.M. Thus, according to Villarreal, he did not commit capital murder or murder because X.M. had already expired when Villarreal allegedly threw him.

In making this argument, Villarreal continually points to the cumulative evidence against N.M. as the aggressor. A.R. testified that her mother was frequently abusive to X.M. Several extended family members all testified that they were concerned for the children because of N.M.'s history of abusing the children and drug problems. And Villarreal highlights the fact that N.M. herself admitted to severely beating X.M. on a regular basis, including on the date of his death.

We do not disagree that the evidence overwhelmingly establishes N.M.'s long history of physical abuse of X.M. However, in these circumstances, establishing N.M.'s guilt does not diminish Villarreal's guilt. The State did not need to establish that Villarreal's actions were the only cause of X.M.'s death; rather, the State only needed to establish that his actions were sufficient by themselves to have caused the death, or that his actions, coupled with the actions of N.M., were sufficient to have caused the death. *See* TEX. PENAL CODE ANN. § 6.04(a); *Fountain*, 401 S.W.3d at 358. Eyewitness testimony from A.R. asserted that both N.M. and Villarreal beat X.M. on August 26, 2014. A.R. testified that she saw Villarreal pick X.M. up by the throat and slam his head into the refrigerator handle and that afterward, X.M. was completely unresponsive. Dr. Fernandez testified that he would not expect to find much, if any, blood at the scene because the trauma to X.M.'s head caused massive internal bleeding and swelling, but not the kind of

wound that would gush blood outside the body. Furthermore, Dr. Fernandez testified that the wound on X.M.'s head was consistent with being struck by the refrigerator handle. With this evidence, the jury could have reasonably found that Villarreal threw X.M. against the refrigerator. *See Whatley,* 445 S.W.3d at 166. Furthermore, the jury could find that Villarreal's actions alone were sufficient to have caused the death or that his actions, combined with the actions of N.M., were sufficient to have caused the death. *See Robbins,* 717 S.W.2d at 351. It does not matter if, or how much, N.M. contributed to X.M.'s demise as long as Villarreal's conduct constituted a concurrent cause. *See id.*; *Fountain*, 401 S.W.3d at 358.

In sum, while we do not have jurisdiction to address Villarreal's challenge to his murder conviction, *see Meachum*, 273 S.W.3d at 806, a reasonable jury could have found the essential elements of capital murder beyond a reasonable doubt. *See Whatley,* 445 S.W.3d at 166. We conclude that the evidence was legally sufficient to support the capital murder conviction. We overrule Villarreal's sole issue.

V. CONCLUSION

We affirm the trial court's judgment.

NORA L. LONGORIA
Justice

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

Delivered and filed the
13th day of July, 2017.