



NUMBER 13-18-00338-CR

COURT OF APPEALS

THIRTEENTH DISTRICT OF TEXAS

CORPUS CHRISTI - EDINBURG

ERIC BENJAMIN TRAYLOR,

Appellant,

v.

THE STATE OF TEXAS,

Appellee.

**On appeal from the 413th District Court
of Johnson County, Texas.**

MEMORANDUM OPINION

**Before Chief Justice Contreras and Justices Longoria and Hinojosa
Memorandum Opinion by Justice Hinojosa**

A jury convicted appellant Eric Benjamin Traylor of capital murder of a person under the age of ten and sentenced him to a life sentence without the possibility of parole. See TEX. PENAL CODE ANN. § 19.03(a)(8). By one issue, Traylor asserts that the evidence was insufficient to support the verdict. We affirm.

I. BACKGROUND¹

Traylor was in a romantic relationship with Amirah Shahin. The couple had a four-month-old son named R.T. and Shahin had a twenty-month old daughter, A.G., from a previous relationship.² The couple and their children lived together in a home in Venus, Texas.

On February 23, 2017, Traylor dropped off Shahin at her job at 4:00 p.m. so she could work the night shift as a transport officer for the La Salle Unit of the Johnson County Jail. Traylor then took the children to his brother Santwan Traylor's house, where A.G. ate and played with her three little cousins. At approximately 8:00 p.m., Traylor left to return to home. Traylor said that, while he was taking the children out of his vehicle, A.G. accidentally "clipped" the back of her head on the car door. The three went inside. Traylor recalled that he bathed A.G. and then they watched a movie until she fell asleep at 10:00 p.m.

Traylor reported that A.G. slept through the night and awoke the next morning at about 8:00 a.m. He made her a sausage and egg breakfast burrito and then went to shower. When he got out of the shower five minutes later, he discovered A.G. was choking on the burrito and not breathing. He said he slapped her out of panic to help revive her. He frantically called 911.

Detective Sergeant Mateo Villarreal of the Venus Police Department was the first

¹ This case is before this Court on transfer from the Tenth Court of Appeals in Waco pursuant to a docket-equalization order issued by the Supreme Court of Texas. See TEX. GOV'T CODE ANN. § 73.001.

² We use initials to protect the identity of the children. See *Salazar v. State*, 562 S.W.3d 61, 63 n.1 (Tex. App.—Corpus Christi—Edinburg 2018, no pet.).

responder to the 911 call. When Villarreal arrived, he noticed A.G. was “extremely unresponsive.” He reported that her skin was discolored, bruising was forming around the left temple area of her face, and that her eyes “appeared lifeless.” He knew she needed immediate medical attention. Villarreal testified that he first tried to get his finger in A.G.’s mouth to clear her airway, but had difficulty doing so because her jaw was locked. Based on this observation, he thought she might be having a seizure. He did see some food matter on the left side of her mouth, so he wiped it away with a towel. He then performed a sternum rub on the little girl with his knuckle to try to get a reaction, but A.G. did not respond. Villarreal immediately requested a CareFlight helicopter evacuation. Villarreal testified that Traylor told him, “I hit her—I didn’t know—I didn’t know what to do.” Traylor also mentioned to Villarreal that A.G. hit her head the night before. Medics arrived to treat A.G. and transport her to the air flight landing zone.

Flight medic Robert Gomez testified that as soon as medics arrived at the landing zone, he intubated A.G. He noted that A.G. had a 3 on the Glasgow Coma scale, which means “no response, no talking, no orientation, and no movement.” He observed bruising on A.G.s’ face, head, and chest. He testified that, in his twenty-two year career, he had never seen blunt force brain trauma from a slap on the head. A.G. was flown to Cook Children’s Hospital in Fort Worth, Texas for further treatment.

Detective James Novian with the Johnson County Sheriff’s Office went to the hospital to investigate. A.G. was in the intensive care unit and medical personnel advised Novian that she had no brain activity at the time. Novian photographed bruising on and above A.G.’s right eye, and he noticed bruising beginning to appear on the right side of

her forehead up to her hairline and towards the back of her head. He also photographed a separate area of bruising above her left eye. Novian further noted bruising on A.G.'s shoulder—he stated it was “darker [whereas] on the face it [was] red and it move[d] up into a darker bruise.” Novian also photographed some bruising on her abdomen—he commented that they had a “yellowish-green tint around them,” indicating they were older injuries.

Sergeant Jay Kniffen was also assigned to the Johnson County Sheriff's investigation. He stated that he arrived at the Traylor home shortly after A.G. had been transported to the CareFlight landing zone. Kniffen asked Traylor to go to the police department for questioning. Traylor agreed and arrived on his own. During questioning, Novian called Kniffen to inform him that doctors found blunt force trauma to A.G.'s head, significant brain injury, and that her prognosis was not good. Traylor admitted he hit A.G. but only because he panicked when he realized she was choking and could not breathe.

Sergeant Kniffen further testified that during his investigation, he came upon certain text messages between Traylor and his mother, Angelee Casas, that were exchanged while A.G. was in the hospital. During his direct examination at trial, he testified as follows:

- Q. So if you could begin reading these messages, please. Again, I'm indicating here message No. 412. Are you aware who that message is to?
- A. I believe that's to his mother, Angelee Casas.
- Q. All right. Please just begin reading these messages for the Jury.
- A. The first one, 412, says: “In customer.” Then he texted her again and says: “Custody.” She asked him: “Why?” And she says, “Please tell

me what happened.” From the mother again: “[A.G.] has head trauma and sleeping—swelling to the brain.” And then she basically corrected herself in that last one, said: “Swelling.”

Q. Going to the next page, begin at 418, please, sir.

A. It's from his mother again, says: “Please tell me.” And he tells her to call his lawyer. And then she asks for the number. And then he tells her Curt Crum. And she again says: “Please tell me what happened so they can help her live, please, Eric.” And then he says: “I think she has had this problem.” From the mother, Angelee Casas: “No, they said she had severe head trauma.”

.....

A. It's from his mother: “Everybody at the hospital is here for [A.G.]” From his mother. “Everybody is there supporting her.” Then she says: “I need you to tell me what happened.” And the Defendant says: “Lawyer.” From the mother: “No, Eric, [A.G.] might die.” And then he says: “What?” And then the mother says: “I don't know, Eric. I just want the truth, please.” She then—she again says: “For [A.G.], please.”

Q. Go ahead, sir.

A. Mother again: “She loved you.” He says: “I love her too.” She says: “Tell me what happened.” And he says: “Amirah.” Again it goes on to the mom: “Amirah was not doing transport....”

.....

Q. Move forward now to message No. 492, please.

A. It's from his mother again: “They said if she lives she will be permanently brain damaged.” And then he tells her: “I didn't hit her.” From the mother to him: “What happened to her? They said she didn't choke.” And Defendant to his mother: “I was thinking if she had this problem for a while maybe it triggered today.” And to his mother again: “If I beat her, where are the bruises?”

Q. Let me stop you right there for a moment, Detective. By this point, so we're up to now 2:30 in the afternoon of February 24th at that point; is that correct?

- A. Correct.
- Q. By that point, are you aware whether or not [A.G.]’s body was showing signs of abuse?
- A. There—she was.
- Q. She was?
- A. Yes.
- Q. Bruising and such?
- A. Bruising on the left side of her head.
- Q. Now, at that point they’d also determined she had certain internal injuries; is that correct?
- A. Correct.
- Q. What internal injuries at this point have they realized [A.G.] had suffered?
- A. It was severe trauma to the left side of her brain.
- Q. Okay. Bleeding or what?
- A. Bleeding, yes, sir.
- Q. If you can continue from that message 4—
- A. It’s 497. Says, from his mother: “I don’t know, Eric.” He asks: “Is she okay?” And asks her again: “Somebody please tell me what you know.”
- Q. Okay. Go ahead there, message 500.
- A. No. 500, to his mother again: “What do you think?” From Eric, or from the Defendant. “I think you hit her, Eric, but not on purpose. I think you were tripping and didn’t realize what you did.” And to his mother: “Well, that’s what they think. To his mother again: “Have you spoke with Amirah yet?” She says: “Who?” And then he says: “Detective.” And then from his mother, she says: “No.” And then mother again: “I haven’t.” And then to his mother: “Have you spoken with Amirah?”

- Q. Ask you to begin here at message 514, please.
- A. Okay. From his mother again: "I can't do this right now, Eric." To his mother: "I know I was hard on her but I only meant well." From his mother: "What the f*ck do you mean?" And to his mother: "She will live." To his mother again: "I ain't saying I did it." To his mother again: "What did they say about [R.T.]?" And from his mother: "I know you did now. I'm sorry and I love you, son, but this is too much for me to take right now." To his mother: "You all got it wrong."

After Traylor was in custody, he made a series of phone calls to relatives which were recorded. In one phone call, he told a relative that A.G. fell from the tailgate of Santwan's Ford F-150 pickup truck the night before and hit the front of her head on concrete. When Detective Kniffen followed up with Santwan and his wife regarding this story, however, neither recalled A.G. falling in this manner at their home.

Jamye Coffman, M.D., Medical Director of the CARE Team at Cook Children's Hospital in Fort Worth, testified. Dr. Coffman reviewed A.G.'s CT scan and testified that A.G. had subdural hemorrhage which covered the left side of her brain and had subscapular bruising. Dr. Coffman also reported that A.G.'s brain was herniating, meaning her brain was "swelling to the point that it's pushing down onto the brain stem in the different areas that are necessary for life" Dr. Coffman testified that choking would not cause this bruising or subscapular bruising. He also stated that being clipped by a car door could cause an injury but "not the whole constellation of injuries" seen on A.G. Dr. Coffman ordered a skeletal survey of [A.G.], which included images of her spine, chest, ribs, pelvis, extremities, hands, and feet. There were no old or new fractures. The doctor acknowledged that young children can get bruised in a variety of ways, given their age and development.

The medical examiner who performed A.G.'s autopsy, Dr. Tasha Greenburg of the Tarrant County Medical Examiner's office in Fort Worth, testified that she declared the manner of death as "homicide."

Shahin testified that the night of February 23, she talked to Traylor at 10:00 p.m. He told her A.G. was asleep but did not mention that A.G. had "clipped" her head or fallen from Santwan's truck earlier in the day. At midnight, Traylor sent Shahin a text stating, "Why are you ignoring me?" Traylor also tried to call but Shahin responded, "I can't talk in room." In the morning, the couple began texting again. At 8:30 a.m., Traylor texted, "I text you but no response, and last night you hardly text so I fell asleep on you." When Shahin asked whether she could get a ride home from work from Traylor, Traylor responded with a message asking, "What are you trying to do, have him take you home[?]" Shahin explained that Traylor was asking if her work partner, Derek Williams, was going to give her a ride home. At 8:42 a.m., Traylor texted, "the driver [Williams] give you a ride[?]" And then, "Answer me." At 8:47 a.m., Traylor continues, "See you been playing this beat around the truth shit all night. I don't know what to think. You didn't even ask me yet. You getting a ride with that fool. All right. I see how it is. Bet that love." At 9:07 a.m., he called 911 for A.G.

Shahin told authorities that Traylor was the children's primary caretaker because she worked. Shahin also told them that A.G. loved Traylor and that Shahin "never had a doubt" she could leave her children with him.

The jury convicted Traylor of capital murder of a person under the age of ten and sentenced him to a life sentence without the possibility of parole. Traylor appeals, arguing

there is not sufficient evidence to support the verdict.

II. SUFFICIENCY OF THE EVIDENCE

A. Standard of Review and Applicable Law

When reviewing the sufficiency of the evidence, we view the evidence in the light most favorable to the verdict and determine whether a rational factfinder could have found the elements of the offense beyond a reasonable doubt. See *Gear v. State*, 340 S.W.3d 743, 746 (Tex. Crim. App. 2011) (citing *Jackson v. Virginia*, 443 U.S. 307, 318–19, (1979)). In making this review, we consider all evidence in the record, whether it was admissible or inadmissible. *Winfrey v. State*, 393 S.W.3d 763, 767 (Tex. Crim. App. 2013). We also consider direct and circumstantial evidence, as well as any reasonable inferences that may be drawn from the evidence. See *Clayton v. State*, 235 S.W.3d 772, 778 (Tex. Crim. App. 2007).

Under this review, we do not re-evaluate the weight and credibility of the evidence or substitute our judgment for that of the factfinder. See *Williams v. State*, 235 S.W.3d 742, 750 (Tex. Crim. App. 2007). Because the jury is the sole judge of the credibility of witnesses and of the weight given to their testimony, any conflicts or inconsistencies in the evidence are resolved in favor of the verdict. See *Wesbrook v. State*, 29 S.W.3d 103, 111 (Tex. Crim. App. 2000). To be entitled to a reversal of conviction on an insufficiency of the evidence claim, appellant must show that no rational jury could have found all of elements of the offense beyond a reasonable doubt. *Id.*

We measure the sufficiency of the evidence by the elements of the offense as defined by a hypothetically correct jury charge. *Cada v. State*, 334 S.W.3d 766, 773 (Tex.

Crim. App. 2011) (citing *Malik v. State*, 953 S.W.2d 234, 240 (Tex. Crim. App. 1997) (en banc)). Such a charge is one that accurately sets out the law, is authorized by the indictment, does not unnecessarily increase the State's burden of proof or unnecessarily restrict the State's theories of liability, and adequately describes the offense for which the defendant was tried. *Id.* A person commits murder “if he . . . intentionally or knowingly causes the death of an individual.” TEX. PENAL CODE ANN. § 19.02(b)(1). The offense a capital crime if “the person murders an individual under 10 years of age.” See *id.* § 19.03(a)(8).

B. Analysis

Traylor claims the evidence was insufficient to support the verdict of capital murder. The record shows that, on February 23, 2017, A.G. visited her uncle Santwan’s home. There, she ate and played with her cousins until it was time to leave. Neither Santwan nor his wife saw her fall from the tailgate of his truck onto the concrete. Later that evening, when Traylor returned home with his children, he claimed he gave A.G. a bath and that they watched a movie until she fell asleep at 10:00 p.m. When he talked to his live-in romantic partner Shahin that evening, he did not mention that A.G. fell from the tailgate of Santwan’s truck or that A.G. “clipped” the back of her head on the car door when they arrived home.

Traylor was the only adult with A.G. during the time she sustained her ultimately fatal injuries. And the record reflects that Traylor appeared to be arguing with Shahin during this time. On the morning of February 24, Traylor was upset that Shahin was ignoring his text messages. He also accused Shahin of trying to get a ride home with her

male co-worker, Williams. He wrote, "See you been playing this beat around the truth shit all night. I don't know what to think. You didn't even ask me yet. You getting a ride with that fool. All right. I see how it is. Bet that love." About twenty minutes later, Traylor frantically called 911 about A.G. Later that day, after A.G. had been diagnosed with blunt force trauma to the head, his mother asked Traylor to "[t]ell [her] what happened," to which he responded, "Amirah."

The jury heard that Traylor told his mother, "I know I was hard on her but I only meant well," to which his mother responded, "What the f*ck do you mean?" Traylor answered, "She will live" and "I ain't saying I did it." Casas reacted, "I know you did now. I'm sorry and I love you, son, but this is too much for me to take right now."

Dr. Coffman, who treated A.G. at Cook Children's Hospital, testified that A.G. had subdural hemorrhage which covered the left side of her brain and subscapular bruising. Dr. Coffman also reported that A.G.'s brain was herniating, or "swelling to the point that it's pushing down onto the brain stem in the different areas that are necessary for life" Dr. Coffman testified that choking would not cause this bruising or subscapular bruising. He also stated that being clipped by a car door could cause an injury but "not the whole constellation of injuries" they saw on A.G. And the Tarrant County Medical Examiner who performed A.G.'s autopsy, Dr. Tasha Greenberg, declared A.G.'s death a "homicide" based on her examination.

Under a legal sufficiency review, we do not re-evaluate the weight and credibility of the evidence or substitute our judgment for that of the factfinder. See *Williams*, 235 S.W.3d at 750. Although the jury heard evidence that young children often get bruises,

that A.G. loved Traylor, and that Shahin “never had a doubt” Traylor could care for their children, it appears the jury resolved these inconsistencies in the evidence in favor of the verdict. See *Wesbrook*, 29 S.W.3d at 111. Because a rational factfinder could find all of the elements of capital murder in this case beyond a reasonable doubt, we conclude there was sufficient evidence to support the verdict. See *id.* We overrule Traylor’s sole issue.

III. CONCLUSION

We affirm the trial court’s judgment.

LETICIA HINOJOSA
Justice

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

Delivered and filed the
9th day of April, 2020.