



NUMBER 13-18-00453-CR

COURT OF APPEALS

THIRTEENTH DISTRICT OF TEXAS

CORPUS CHRISTI – EDINBURG

RAY MITCHELL RODGERS,

Appellant,

v.

THE STATE OF TEXAS,

Appellee.

**On appeal from the 36th District Court
of San Patricio County, Texas.**

MEMORANDUM OPINION

**Before Justices Benavides, Perkes, and Tijerina
Memorandum Opinion by Justice Perkes**

A jury convicted Ray Mitchell Rodgers of capital murder, and he received a mandatory life sentence without the possibility of parole. See TEX. PENAL CODE ANN. §§ 12.31(a)(2), 19.02(b)(1), 19.03(a)(8). By a single issue, Ray contends that the evidence was legally insufficient to support his conviction. We affirm.

I. BACKGROUND

Ray was charged by indictment with “intentionally and knowingly caus[ing] the death of an individual, namely, RaeJay A. Rodgers, an individual younger than 10 years of age, by causing blunt force trauma to RaeJay A. Rodgers in a manner and means which is unknown to the grand jury.” The following evidence was presented at trial.

Angela Rodgers and her husband Ray had nine children together, ranging in age from thirteen-year-old twins to a four-month-old boy named RaeJay. In January 2016, the family resided in Portland and occupied separate two-bedroom apartments in the same complex, with Angela and the nine children living upstairs in one unit and Ray and his adult son Dominique living downstairs in the other. However, the children freely moved between the apartments and sometimes spent the night in Ray’s unit where they kept some of their things.

On January 26, 2016, Angela and Ray were both off from work. Throughout the day, Angela ran errands and periodically returned home where Ray was taking care of their preschool-aged children, including RaeJay. Angela dropped Dominique off at work around 3:00 p.m. and then picked up the older children from school. When she returned home around 4:00 p.m., Angela testified that “[RaeJay] was doing good. He was playing with his sisters.” She checked on him again before leaving for the grocery store around 6:30 p.m., and “he seemed to be well.” When she left, RaeJay was lying on Dominique’s bed in Ray’s apartment. The other young children were also downstairs, and the twins were upstairs in Angela’s place doing chores. According to Angela, the bed that RaeJay was lying on “was higher than usual,” and the floor in that room was made of a hard,

concrete tile.

Angela called Ray around 6:51 p.m. to ask him a question, and he didn't mention anything out of the ordinary. Then Ray called Angela approximately ten minutes later to find out if she had left the grocery store yet. According to Angela, "I told him I was checking out already[,] and he hung up." He called back minutes later, asking again if she had left the grocery store. At that point she asked if something was going on, and Ray told her something was wrong with RaeJay, that he must have fallen off the bed. Ray told her that he walked into Dominique's bedroom and found RaeJay lying on the floor. Ray picked him up and noticed that he wasn't moving, and despite "wiggling him," RaeJay remained unresponsive. Angela asked him what was wrong with RaeJay, and Ray told her that he "didn't know."

Angela hung up and called her thirteen-year-old daughter and asked her to go downstairs to check on RaeJay. Angela explained that her daughter quickly called back "crying" and "hysterical" because "[RaeJay] wasn't breathing." The daughter called 9-1-1 "because [Ray] couldn't find his cell phone."

Angela arrived home minutes later and immediately went to her neighbor Seth Malcolm's apartment because she knew he was employed as an emergency medical technician. Malcolm confirmed that RaeJay was not breathing and performed CPR on RaeJay before other emergency medical personnel arrived and relieved him. Malcolm, along with several of the emergency medical personnel, testified that they followed proper CPR protocols for an infant. Paramedic John King testified that RaeJay had no pulse when they arrived but during the transport to the local emergency room, "we got

circulation back and actually got a pulse back during that time.”

A week prior to the incident, Angela took RaeJay to the doctor for a check-up. The test results were normal, and Angela said that the doctor told her “[RaeJay] was doing fine and that he was developing very quickly and that everything was good.”

Sergeant Michelle Quade with the Portland Police Department was the first officer on the scene. She began assisting Malcolm with CPR and noticed that RaeJay had “some bruising around the eyes and the bridge of the nose between the eyes.”

According to Sergeant Quade, “[t]here was really no reaction from [Ray],” who was standing next to them during CPR. “There really wasn’t a lot of emotion showing,” she added. Malcolm made a similar observation, saying Ray “pretty much stood there quietly.” By comparison, Malcolm said that when Angela “knocked on my door, she about knocked my door down [Ray] was not as emotional as she was. His emotions were well in check.”

Once EMS arrived, Sergeant Quade and the other officers who had arrived on the scene began their investigation. Sergeant Quade was wearing a bodycam and the recording was played for the jury. Ray mentioned that earlier in the day RaeJay had also fallen from a chair onto a blanket but appeared uninjured. He then took her through the sequence of events that evening.

Ray told Sergeant Quade that he gave RaeJay a bath and then laid him in the center of Dominique’s bed with a bottle propped up by a blanket. The bed was in a corner of Dominique’s bedroom with the headboard and one side each against a wall. Ray said that RaeJay was lying across the bed with his feet towards the open side of the bed. According to Ray, “everything was fine” with RaeJay at this point. Ray then left the

apartment for approximately ten minutes to visit his friend Stephen Bell, who also lived in the complex. Ray acknowledged that he left RaeJay and the other small children unattended during this time but said that his older twins are usually “in and out” of his apartment.

Bell, whose conversation with Sergeant Quade was also recorded and played for the jury, confirmed that Ray visited him during this period. Bell stated that Ray came over ten to fifteen minutes after their last text exchange at 6:08 p.m. and stayed until Bell’s girlfriend called ten to fifteen minutes after Ray arrived. Sergeant Quade looked at Bell’s phone to confirm the timeline and saw that his girlfriend called him at approximately 6:50 p.m. Bell also told Sergeant Quade that a few minutes after Ray left, he went downstairs and borrowed \$5.00 from Ray for cigarettes. Ray’s thirteen-year-old daughter was leaving Ray’s apartment at the time and told Bell he could find Ray in his bedroom. Bell said that he saw the other young children sitting on the couch and was only in the apartment for approximately thirty seconds before he left.

Ray told Sergeant Quade that when he returned home, he resumed cleaning the apartment before checking on RaeJay. He found RaeJay in Dominique’s bedroom lying face down on the floor in the opposite direction from where he left him on the bed. Ray estimated that twenty to thirty minutes elapsed between when he laid RaeJay in the bed and discovered him on the floor and another thirty-five minutes passed before Malcolm began CPR. According to Sergeant Quade, based on Ray’s descriptions of where he left and then found RaeJay, “[RaeJay] would have had to have flipped up right and rolled over to be facing the opposite direction face down.”

Sergeant Quade measured the height of the bed at 29.5 inches. Pictures of the

bed provided to the jury show that the mattress and box spring were placed on a thick frame that protrudes nearly two inches from the edge of the mattress. On cross examination, Sergeant Quade agreed that if RaeJay fell off the bed, as Ray said, he could have struck the frame on his way to the floor.

The pictures also show a baby bottle in the center of the bed along with a comforter. Lead investigator Lieutenant Jonathan Quade¹ with the Portland Police Department arrived at the scene shortly after EMS and other responding officers. He testified that the bottle in the picture was “warm to the touch.”

Lieutenant Quade interviewed Ray the day after the incident, and a video recording of the interview was played for the jury. During the interview, Ray repeated the version of events that he told investigators on the scene. He added that at some point after he returned from Bell’s, but before he discovered RaeJay, his thirteen-year-old son came downstairs to use the restroom. He also expressed his love and affection for RaeJay and became emotional during the interview. Ray denied that RaeJay had ever been spanked or “whooped,” as Lieutenant Quade called it. They also discussed a statement made by a third person who claimed to overhear medical professionals at Driscoll Hospital acknowledging that RaeJay received negligent medical care at Driscoll. Based on the reports he received from the treating physicians and the Nueces County medical examiner, Lieutenant Quade later wrote a complaint against Ray for capital murder.

Dr. Carlyle Langhorn was the attending physician at the local emergency room. Dr. Langhorn testified that when RaeJay arrived by ambulance “he was in a grave condition, critical condition; not breathing on his own, no heartbeat.” The facility was not

¹ For clarity, Sergeant Quade and Lieutenant Quade are married.

equipped to handle the severity of RaeJay's injuries, so Dr. Langhorn did his best to stabilize RaeJay and then transferred him to Driscoll Children's Hospital in nearby Corpus Christi.

Dr. Langhorn stated that he was "very suspicious" of Ray's explanation because RaeJay's injuries did not "match up" with a fall from a bed. During trial, Dr. Langhorn was shown a picture of the actual bed. Based on his training and experience as an emergency room physician, Dr. Langhorn opined that RaeJay's injuries were not consistent with a fall from the bed.

Once at Driscoll Children's Hospital, RaeJay was treated by several physicians and nurses. Charge nurse Penny Gaddis testified that when RaeJay arrived, he was intubated and unresponsive to stimuli. At one point, they could no longer detect RaeJay's pulse and had to perform two-finger compressions until a palpable heart rate returned.

Sandra Pardo was on duty as a Sexual Assault Nurse Examiner when RaeJay arrived. Pardo explained at trial that in addition to conducting forensic examinations for sexual assaults, she is also trained to conduct examinations for physical abuse. She observed RaeJay while CPR was in progress and noted the following injuries: linear discolorations to the right groin area, a linear abrasion to the anterior thigh, bruising to the inner canthus of the right eye, a bruise to the left temple area, and a bruise to the upper left eyelid. Pardo acknowledged during cross examination that she did not observe any of the life saving measures performed on RaeJay before he arrived at Driscoll and did not review his prior medical history.

Dr. Ada Booth is board certified in both general pediatrics and child abuse pediatrics. She was on duty when RaeJay arrived at Driscoll. She testified that a four-

month-old is generally capable of rolling over from their back to their belly, pushing up on their arms, lifting their head, grabbing objects, moving their four extremities equally, but not crawling. Angela and Ray both made statements that RaeJay was capable of “scooting.”

Dr. Booth explained that she was asked to consult in this case because the attending emergency room physician at Driscoll suspected non-accidental trauma. As part of her consultation, she reviewed RaeJay’s medical records, conducted a physical examination, and spoke with Angela and Ray. Dr. Booth testified that RaeJay underwent two surgeries the night he arrived at Driscoll. During the initial exploratory laparotomy, RaeJay’s lacerated spleen was removed. A second exploratory laparotomy became necessary due to ongoing blood loss and abdominal compartment syndrome, which is a condition that causes organ damage due to increased pressure in the abdomen. During the second surgery, it was discovered that RaeJay was also suffering from a lacerated liver.

RaeJay succumbed to his injuries the following afternoon. After conducting a second physical examination and reviewing RaeJay’s medical records, including x-rays, Dr. Booth noted the following additional injuries: bruising to the forehead, left ear, and left eyelid; a subconjunctival hemorrhage to the left eye; and six rib fractures with three having evidence of healing. Dr. Booth acknowledged that two of the three new fractures could have been caused by CPR compressions but found it an unlikely explanation for the third fracture due to its position on the body. Dr. Booth did not believe the other three fractures could have been caused by CPR because it takes at least two weeks for evidence of

healing to show on an x-ray.

Based on her medical training and experience, Dr. Booth testified that RaeJay's injuries were not consistent with Ray's explanation that RaeJay fell from the bed. She characterized a fall from the bed as a "short fall" and explained that "a short fall would not be consistent with significant abdominal injuries" like those suffered by RaeJay. She also noted that RaeJay suffered contusions on different parts of his body that indicated multiple impacts, not a single fall. However, on cross examination Dr. Booth acknowledged that if RaeJay fell on the bedframe before hitting the floor, it could have caused different injuries to different parts of his body in a single fall.

Dr. Booth described Ray's demeanor as "somewhat matter-of-fact" when they spoke that evening. According to Dr. Booth, Ray recalled the events leading up to RaeJay's purported fall "as if it was a casual story." However, unprompted, Dr. Booth admitted that people process their emotions differently.

The county medical examiner, Dr. Ray Fernandez, testified that he performed a forensic autopsy on RaeJay. During his examination, Dr. Fernandez measured RaeJay's weight at nineteen pounds and his height at twenty-nine inches. Dr. Fernandez testified that he made the following findings: blunt force trauma to the head indicated by bleeding between the scalp and the skull, a subdural hematoma and bilateral subarachnoid hemorrhage on the surface of the brain, swelling of the brain, and blood in the spinal canal; blunt trauma to the left kidney indicated by a laceration and bleeding; blunt trauma to the liver, which is located on the right side of the body, indicated by a laceration and bleeding; damage to the intestines due to a lack of blood flow; and fractured ribs on the

left side of the ribcage at the front, side, and back of the ribcage.

Dr. Fernandez testified that because children's ribs "are very elastic" compared to adults, it is "very uncommon" for them to suffer fractured ribs from chest compressions. If they were to occur, he would expect to see them on the front of the ribcage, not the side and back where RaeJay suffered some of his fractures. Additionally, Dr. Fernandez explained that based on their location in the body, he would not expect to see injuries to the kidney or liver from chest compressions.

Dr. Fernandez also conducted an iron stain test on different parts of the body to determine when the injuries occurred. The test results were largely negative for iron deposits, which indicated that the injuries were recent.

Based on the "totality of [his] findings," Dr. Fernandez opined that RaeJay's injuries were not consistent with a fall from a bed. Instead, he believed that the force necessary to cause these injuries was consistent with a fall from at least a second-story window or a motor vehicle crash. During cross examination, however, he acknowledged that a forty-year old woman or even a fourteen-year old could potentially generate the force necessary to inflict the injuries suffered by RaeJay. Ultimately, Dr. Fernandez determined the cause of death to be homicide caused by multiple blunt force injuries.

Finally, Dr. Frank Scribbick conducted a postmortem pathological examination of RaeJay's eyes based on Dr. Fernandez's referral. Dr. Scribbick is a faculty member at the University of Texas Health Center in San Antonio and a practicing ophthalmologist and hospitalist. He treats "all the trauma patients, all the emergency room patients, and anyone that has an eye problem" at the hospital where he works. Based on his examination, Dr. Scribbick found retinal folds and diffused retinal hemorrhages in both

eyes and blood around the optic nerves, the combination of which is “highly suggestive of non-accidental trauma.” Dr. Scribbick testified that this constellation of findings is atypical of accidental trauma; instead, they indicate torsional force abuse or what was once referred to as “shaken baby.” When asked if these findings could occur from a fall from a bed twenty-nine inches off the floor, Dr. Scribbick stated that it would be “very improbable.” Dr. Scribbick added that based on his work in a trauma center treating accidental eye injuries, “you don’t see retinal hemorrhages and the things that we see in a case like this.”

The jury convicted Ray of capital murder, and this appeal ensued.

II. STANDARD OF REVIEW & APPLICABLE LAW

When reviewing claims of legal insufficiency, the relevant question is whether, after viewing the evidence in the light most favorable to the prosecution, 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 (1979); *Whatley v. State*, 445 S.W.3d 159, 166 (Tex. Crim. App. 2014); *Martinez v. State*, 527 S.W.3d 310, 320 (Tex. App.—Corpus Christi–Edinburg 2017, pet. ref’d). The fact finder is the exclusive judge of the facts, the credibility of the witnesses, and the weight to be given to the testimony and is presumed to have resolved any conflicts in the evidence in favor of the verdict. *See Bartlett v. State*, 270 S.W.3d 147, 150 (Tex. Crim. App. 2008); *see also Hooper v. State*, 214 S.W.3d 9, 13 (Tex. Crim. App. 2007) (giving deference to the fact-finder “to fairly resolve conflicts in testimony, to weigh the evidence, and to draw reasonable inferences from basic facts to ultimate facts.”).

“Circumstantial evidence is as probative as direct evidence in establishing guilt,

and circumstantial evidence alone can be sufficient to establish guilt.” *Winfrey v. State*, 393 S.W.3d 763, 771 (Tex. Crim App. 2013) (citing *Hooper*, 214 S.W.3d at 13). Juries are permitted “to draw reasonable inferences as long as each inference is supported by the evidence presented at trial. However, juries are not permitted to come to conclusions based on mere speculation or factually unsupported inferences or presumptions.” *Hooper*, 214 S.W.3d at 15. “[A]n inference is a conclusion reached by considering other facts and deducing a logical consequence from them,” while “[s]peculation is mere theorizing or guessing about the possible meaning of facts and evidence presented.” *Id.* at 16. A conclusion based on speculation may be reasonable, “but it is not sufficiently based on facts or evidence to support a finding beyond a reasonable doubt.” *Id.*

Sufficiency of the evidence is measured by the elements of the offense as defined by a hypothetically correct jury charge. *Broughton v. State*, 569 S.W.3d 592, 608 (Tex. Crim. App. 2018) (citing *Malik v. State*, 953 S.W.2d 234, 240 (Tex. Crim. App. 1997)). In this case, a hypothetically correct charge would instruct the jury to find Rodgers guilty of capital murder if he intentionally or knowingly caused the death of an individual under ten years of age. See TEX. PENAL CODE ANN. §§ 19.02(b)(1), 19.03(a)(8). Knowingly is a lesser culpable mental state than intentionally. *Id.* § 6.02(d). A person intentionally commits murder if it is his objective to produce the death of the decedent; a person knowingly commits murder if he is reasonably certain his conduct will produce the death of the decedent. See *id.* § 6.03(a), (b). Thus, at a minimum, the State had to prove that Ray was reasonably certain that his conduct would cause RaeJay’s death even if he did not intend the result. See *Darnes v. State*, 118 S.W.3d 916, 920–21 (Tex. App.—Amarillo 2003, pet. ref’d) (discussing how evidence tending to illustrate that defendant did not

intentionally cause the death of the eleven-month-old child did not preclude a finding that he knowingly caused the child's death).

III. ANALYSIS

On appeal, Ray contends that the evidence was legally insufficient to show that he intentionally or knowingly caused the death of RaeJay. He points out that the evidence in his case was entirely circumstantial, and although he acknowledges that circumstantial evidence alone can be sufficient to support a conviction, Ray submits that the circumstantial evidence in this case did not support an inference that (1) he was the perpetrator, and (2) he acted intentionally or knowingly. Instead, Ray argues that the jury reached its conclusion based on mere speculation, which would be insufficient to support a finding of guilt beyond a reasonable doubt. *See Hooper*, 214 S.W.3d at 16. We disagree.

A. The evidence was sufficient to identify Ray as the perpetrator.

Generally, the identity of the perpetrator may be established by direct or circumstantial evidence. *Earls v. State*, 707 S.W.2d 82, 85 (Tex. Crim. App. 1986); see also *Dean v. State*, No. 13-13-00370-CR, 2015 WL 5451106, at *3 (Tex. App.—Corpus Christi—Edinburg July 24, 2015, pet ref'd) (mem. op., not designated for publication). Additionally, beyond a reasonable doubt “does not require the State to disprove every conceivable alternative to a defendant's guilt.” *Ramsey v. State*, 473 S.W.3d 805, 808 (Tex. Crim. App. 2015) (citing *Merritt v. State*, 368 S.W.3d 516, 525 (Tex. Crim. App. 2012)).

Ray has consistently maintained that RaeJay suffered his injuries as a result of falling off the bed. In other words, Ray could not be the perpetrator—at least not for capital murder—because RaeJay's injuries were accidental. Based on the severity and extent of

RaeJay's injuries, the medical experts unequivocally rejected a "short fall" from the bed as a plausible explanation for RaeJay's death. Instead, they all concluded that RaeJay's injuries were caused by a substantially greater force and that the constellation of his injuries indicated non-accidental, blunt force trauma. In reaching their verdict, the jury credited these medical opinions over Ray's explanation, which was their sole prerogative. See *Bartlett*, 270 S.W.3d at 150.

During trial, Ray also suggested that, if there was a perpetrator, it could have been one of several other family members. Indeed, Dr. Fernandez agreed that a "forty-year-old woman" (Angela), a "twenty-four-year-old" (Dominque), and a "fourteen-year-old" (the twins²) would be physically capable of inflicting the injuries suffered by RaeJay.

However, Angela testified that she checked on RaeJay before she left for the grocery store around 6:30 p.m. and that the "he seemed to be well." Ray agreed, saying "everything was fine" when he laid RaeJay on the bed. Ray told police that he found RaeJay unresponsive around 7:00 p.m. From these facts, the jury could reasonably infer that RaeJay suffered his fatal injuries during this roughly thirty-minute window. See *id.* In other words, the perpetrator necessarily had access to RaeJay during this period. See *Garcia v. State*, 16 S.W.3d 401, 405 (Tex. App.—El Paso 2000, pet. ref'd) ("Texas case law is replete with holdings that when an adult defendant has had sole access to a child at the time its injuries are sustained, the evidence is sufficient to support a conviction for injury to a child, or murder if the child dies." (collecting cases)).

It was undisputed at trial that Angela was at the grocery store and Dominique was at work during the time in question. The only other individuals with access to RaeJay

² We note that the twins were thirteen years old at the time of the incident.

during this thirty-minute window were Ray's other children, including the thirteen-year-old twins. Angela, though, testified that the twins were performing chores in her apartment upstairs when she left for the grocery store, and Ray confirmed her account in his interview with Lieutenant Quade. Although Ray left the apartment for approximately ten to fifteen minutes and the twins were regularly "in and out" of his apartment, the State was not required to "disprove every conceivable alternative to [Ray's] guilt." *See Ramsey*, 473 S.W.3d at 808. And Ray did not offer any additional evidence to support his "conceivable alternative" that one or both twins entered the apartment while he was gone and violently assaulted RaeJay. *See id.* Regardless, it was the jury's province to weigh the evidence, and the State offered additional circumstantial evidence to support its theory of the case.

Importantly, (1) Ray left RaeJay unattended while he went to visit a friend, (2) he was the only person to purportedly witness RaeJay lying on the floor, and (3) he alone offered the explanation that RaeJay suffered his injuries from falling off the bed. His explanation, however, was contrary to the medical evidence concerning the severity and extent of RaeJay's injuries. These inconsistencies in and of themselves constitute circumstantial evidence of Ray's guilt. *See Kemmerer v. State*, 113 S.W.3d 513, 516 (Tex. App.—Houston [1st Dist.] 2003, pet. ref'd) (explaining that inconsistencies between the defendant's version of events and the medical evidence constituted circumstantial evidence that defendant was guilty of felony murder of a child left in defendant's care). And the jury could have determined that Ray crafted the story to cover up his crime, demonstrating a consciousness of guilt. *See King v. State*, 29 S.W.3d 556, 565 (Tex. Crim. App. 2000) (holding that making false statements to cover up a crime is

circumstantial evidence indicating consciousness of guilt); *Hyde v. State*, 846 S.W.2d 503, (Tex. App.—Corpus Christi—Edinburg 1993, pet ref'd) (noting that consciousness of guilt “is perhaps one of the strongest kinds of evidence of guilt.” (citing *Torres v. State*, 794 S.W.2d 596, 598 (Tex. App.—Austin 1990, no pet.))).

Several witnesses also testified about Ray’s unemotional demeanor, describing him as having “no reaction” at the scene and being “matter-of-fact” and “casual” about the incident later at the hospital. See *Hernandez v. State*, 939 S.W.2d 173, 178 (Tex. Crim. App. 1997) (explaining that a defendant’s demeanor may connect the defendant to a crime); *Stevens v. State*, 234 S.W.3d 748, 778 (Tex. App.—Fort Worth 2007, no pet.) (weighing a defendant’s lack of emotion about a two-year-old girl’s death as evidence supporting the defendant’s conviction for capital murder). Moreover, the jury was able to observe Ray’s demeanor at the scene through Sergeant Quade’s bodycam video and during his interview with Lieutenant Quade the following day.

Finally, despite observing that RaeJay was unresponsive, Ray failed to call 911 and delayed informing Angela of RaeJay’s condition on more than one occasion until she finally asked him if something was wrong. Angela had to direct her thirteen-year-old daughter to call 911 because Ray suddenly “couldn’t find his cell phone.” As Ray acknowledged, approximately thirty-five minutes passed between the time he discovered RaeJay unresponsive and Malcolm first administered CPR. These circumstances also support an inference of Ray’s guilt. See *Tezino v. State*, 765 S.W.2d 482, 485 (Tex. App.—Houston [1st Dist.] 1988, pet. ref'd) (holding failure to render aid to an injured child is circumstantial evidence supporting a finding of guilt for intentionally injuring the child); see also *Engleton v. State*, No. 08-13-00077-CR, 2015 WL 1285202, at *9 (Tex. App.—

El Paso 2015, no pet.) (mem. op., not designated for publication) (“A defendant’s failure to call 911 or to notify anyone of the victim’s condition is circumstantial evidence of guilt.” (citing *Clayton v. State*, 235 S.W.3d 772, 780–81 (Tex. Crim. App. 2007))).

These collective circumstances, when viewed in the light most favorable to the prosecution, were sufficient for the jury to conclude beyond a reasonable doubt that Ray was the perpetrator. See *Hooper*, 214 S.W.3d at 13 (“Each fact need not point directly and independently to the guilt of the appellant, as long as the cumulative force of all the incriminating circumstances is sufficient to support the conviction.” (citing *Johnson v. State*, 871 S.W.2d 183, 186 (Tex. Crim. App. 1993))).

B. The evidence was sufficient to show Ray acted intentionally or knowingly

“Proof of a culpable mental state almost invariably depends upon circumstantial evidence.” *Montgomery v. State*, 198 S.W.3d 67, 87 (Tex. App.—Fort Worth 2006, pet. ref’d) (citing *Lee v. State*, 21 S.W.3d 532, 539 (Tex. App.—Tyler 2000, pet. ref’d)); *Morales v. State*, 828 S.W.2d 261, 263 (Tex. App.—Amarillo 1992), *aff’d*, 853 S.W.2d 583 (Tex. Crim. App. 1993). “Ordinarily, the culpable mental state must be inferred from the acts of the accused or the surrounding circumstances, which include not only acts, but words and conduct.” *Perez v. State*, 216 S.W.3d 855, 858 (Tex. App.—Corpus Christi–Edinburg 2006, pet. ref’d) (citing *Lee*, 21 S.W.3d at 539)). For example, whether a defendant intentionally or knowingly caused the death of an individual “can be inferred from the extent of the injuries and the relative size and strength of the parties.” *Patrick v. State*, 906 S.W.2d 481, 487 (Tex. Crim. App. 1995) (citing *Lindsey v. State*, 501 S.W.2d 647, 648 (Tex. Crim. App. 1973)); *Herrera v. State*, 367 S.W.3d 762, 771 (Tex. App.—Houston [14th Dist.] 2012, no pet.); *Montgomery*, 198 S.W.3d at 87–88; *Duren v. State*,

87 S.W.3d 719, 726 (Tex. App.—Texarkana 2002, no pet.); *see also Davis v. State*, No. 13-00-395-CR, 2005 WL 1492216, at *1 (Tex. App.—Corpus Christi—Edinburg June 23, 2005, pet. ref'd) (mem. op., not designated for publication). Thus, when an adult violently assaults a young child, the Texas Court of Criminal Appeals has explained that the child's death "may be reasonably expected." *Lindsey*, 501 S.W.2d at 648.

In this case, all the medical experts agreed that the extent and severity of RaeJay's injuries could not have resulted from Ray's proffered explanation. Instead, they concluded that the constellation of RaeJay's injuries was consistent with violent, non-accidental trauma. The disparity in relative size and strength between RaeJay, a four-month-old weighing nineteen pounds at the time of his death, and Ray, an adult male, was readily apparent to the jury. Therefore, based on the extent of the RaeJay's injuries and the relative size and strength of the parties, the jury was permitted to draw an inference that Rodgers acted intentionally or knowingly when he caused RaeJay's death. *See Patrick*, 906 S.W.2d at 487 (citing *Lindsey* 501 S.W.2d at 648); *Herrera*, 367 S.W.3d at 771; *Montgomery*, 198 S.W.3d at 87–88; *Duren*, 87 S.W.3d at 726; *see also Davis*, 2005 WL 1492216, at *1.

C. The "manner and means" are not essential elements of murder

Finally, Ray also maintains that the State was required to prove the "manner and means" by which he caused RaeJay's death as an "essential element" of capital murder but failed to do so. Ray does not cite any authority that stands for this proposition, and we have found none. To the contrary, the Texas Court of Criminal Appeals has explained that "murder is a result-of-conduct crime. What caused the victim's death is not the focus or gravamen of the offense; the focus or gravamen of the offense is that the victim was

killed.” *Johnson v. State*, 364 S.W.3d 292, 298 (Tex. Crim. App. 2012) (citing *Young v. State*, 341 S.W.3d 417, 423 (Tex. Crim. App. 2011)). Thus, the manner in which Ray caused the child’s death, or the means used, are not statutory elements of the offense. See *Johnson*, 364 S.W.3d at 296–97; see also *Torres v. State*, No. 07-11-0142-CR, 2013 WL 1227620, at *2 (Tex. App.—Amarillo Mar. 26, 2013, pet. ref’d) (mem. op., not designated for publication). Instead, “[t]he jury need only unanimously agree that [Ray] caused the death of the [child],” however it occurred.³ See *Sanchez v. State*, 376 S.W.3d 767, 774 (Tex. Crim. App. 2012) (citing *Ngo v. State*, 175 S.W.3d 738, 746 (Tex. Crim. App. 2005)).

Having found the evidence sufficient to support Ray’s conviction for capital murder, we overrule his sole issue.

IV. CONCLUSION

We affirm the trial court’s judgment.

GREGORY T. PERKES
Justice

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

Delivered and filed the
30th day of July, 2020.

³ Nevertheless, the medical experts in this case unanimously agreed that the manner of RaeJay’s death was non-accidental, blunt force trauma. And Dr. Scribbick testified that RaeJay’s injuries were consistent with torsional force abuse; i.e., the means by which Ray caused RaeJay’s death.