



**NUMBER 13-19-00001-CR**

**COURT OF APPEALS**

**THIRTEENTH DISTRICT OF TEXAS**

**CORPUS CHRISTI – EDINBURG**

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**ISAIAH LEE CARDENAS,**

**Appellant,**

**v.**

**THE STATE OF TEXAS,**

**Appellee.**

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**On appeal from the 377th District Court  
of Victoria County, Texas.**

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**MEMORANDUM OPINION**

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

A jury convicted appellant Isaiah Lee Cardenas of capital murder for intentionally causing the death of Rachael Ann Mussett in the course of committing or attempting to commit robbery, a first-degree felony. See TEX. PENAL CODE ANN. § 19.03(a)(2). Cardenas was sentenced to life in prison. See *id.* § 12.31(a)(1). By one issue, Cardenas challenges

the sufficiency of the State's evidence, arguing the State failed to show that he "formed the intent to commit the crime of robbery before or during the attack upon [Mussett]." We affirm.

## I. BACKGROUND

The following evidence was admitted at trial.

On June 11, 2017, an unknown caller reported an abandoned 2017 Jeep Wrangler in a ditch at the corner of U.S. Highway 87 and Key Road outside of Victoria, Texas. Law enforcement later determined that the Jeep was registered to a leasing company, and Mussett was the lessee.

On the morning of June 12, 2017, Joanna Brandl, a certified nursing assistant with Texas Home Health, entered the apartment of 61-year-old Mussett and found Mussett's normally "very neat and organized" home "[i]n shambles." "It looked like someone had been going through everything. There was blood on the wall. Things were broken." Brandl located Mussett's partially clothed body underneath a brown blanket in her bedroom and called 9-1-1.

Christopher Carter, a Victoria Police Department Officer, was one of the first officers to arrive on scene. Carter testified he found Mussett naked from the waist down, and she "looked like her face was—her nose had been a little flattened. Her eyes were swollen shut. There was dr[jied] blood all over her face and neck." Carter further noted that, following a "security sweep" of the residence, several parts of the home "appeared to be in disarray" with "items all over the floor." There, however, was no evidence of forced entry.

Michael McDaniel, a Victoria Fire Department paramedic, also testified to the "noticeable amount of blood and damaged furniture in the living room." McDaniel said that

no resuscitation efforts were made because it was apparent Mussett was already deceased and rigor mortis had begun to set in.

Dr. Satish Chundru, then-Deputy Chief Medical Examiner for Travis County, performed Mussett's autopsy. Dr. Chundru testified Mussett's cause of death was "blunt force head injuries and strangulation."<sup>1</sup> According to Dr. Chundru, Mussett sustained "extensive injuries to the head, both externally and internally," a neck fracture, and "quite a few contusions about" her 4'10" frame, including in between her thighs.

On the same day that Mussett's body was recovered, law enforcement received information in connection to her death and vehicle theft. Amanda Cisneros testified that Cardenas was at her home on Sunday, June 11th, visiting her sons, Damian Luna and Julian Cisneros. After Cardenas left, Damian and Julian told her that Cardenas confessed to killing an elderly woman and stealing her Jeep, which he crashed before arriving at their home. When the information she received from her sons coincided with what she saw in the news, Cisneros testified she called the police.

"He said he[,] like[,] killed an older woman," testified 19-year-old Damian. According to Damian, Cardenas said "he used to help her out to get money," so "he knew to go through the side door." Damian testified that Cardenas broke into Mussett's home intending to steal pills. Cardenas confessed that, at one point, Mussett returned home, ran out of the apartment to try and call the police, but he "persuaded her to come back inside," and the confrontation became physical. "[Cardenas] said he didn't know what to do with the body. So he just put her in her bed, and then he tried to[,] like[,] clean up," testified Damian. Cardenas then stole and "wrecked" Mussett's Jeep. As proof, Damian

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<sup>1</sup> Although Mussett's toxicological exam returned positive for marijuana, Dr. Chundru opined marijuana consumption could not have caused her death.

said Cardenas showed him and Julian a car key with the words “Jeep” imprinted. Damian maintained that, despite the severity of Cardenas’s claims, he believed Cardenas was joking.

“I told him I didn’t believe him,” said Julian, who also described Cardenas as smiling and laughing throughout the conversation. Julian, like Damian, testified Cardenas told them he entered Mussett’s apartment through the side door, assaulted Mussett, and then stole her Jeep. Julian made no mention of Cardenas’s reason for breaking into Mussett’s home, and unlike Damian, Julian did not recall Cardenas admitting to killing Mussett.

Officer Cameron Boyd testified he was dispatched to follow-up on the information provided by Damian and Julian, and he briefly made contact with Cardenas before Cardenas fled. “I got out of my car, told him I needed to talk to him. At that point[,] he ran away,” testified Boyd. A chase ensued, and Cardenas was ultimately located hiding underneath a house.

Sexual assault nurse examiner Kellye Sebby testified she conducted an examination of Cardenas after he was taken into custody. Sebby noted “numerous lacerations” on his abdomen and hands. Cardenas, however, had no injuries to his penis, hips, or legs. On cross-examination, Sebby conceded Cardenas could have sustained cuts and scratches while trying to jump a fence or crawl under a house.

Jenny Lounsbury, a trace evidence analyst with the Texas Department of Public Safety (DPS) in Houston, testified she was tasked with comparing hairs belonging to Cardenas collected from the sexual assault kit with those retrieved from Mussett’s body. Lounsbury opined that hairs recovered from Mussett’s right buttock contained a “DNA

profile” “interpreted as a mixture of two individuals”—Mussett and Cardenas.<sup>2</sup> While Mussett’s body was also swabbed for the presence of biological materials, none of the samples taken from Mussett’s body were positive for spermatozoa.

A folding pocketknife, a black folding knife, and a cast iron skillet appearing to contain blood were also recovered from Mussett’s home and submitted to DPS for further testing. Stephanie Meek, a forensic scientist with DPS, testified that she was unable to “develop any latent prints that were suitable for comparison” off any of the three items. However, the black folding knife and iron skillet tested presumptively positive for blood, and Mussett’s DNA profile could not be excluded as a contributor.

On July 13, 2017, following Cardenas’s arrest and indictment, jail inmate Lagha Boutarfa contacted the State.<sup>3</sup> Boutarfa testified that when he was in the county jail<sup>4</sup> awaiting to testify as a witness in an unrelated case,<sup>5</sup> he overheard Cardenas confessing to killing an “old lady.”

I said, [“]What happened to the woman?["] He said what he did to her. He said he was going over there to buy some narcotics, some pills; but when he g[o]t there, everything changed. I don’t know if he bought the pills, or he didn’t buy. He didn’t say none [sic] of that. When he g[o]t there—Lord, forgive me. It’s out of his mouth. He said he just want to f-ck.

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<sup>2</sup> The State presented evidence to combat any defensive theory regarding a consensual sexual relationship between Musset and Cardenas. Mussett’s brother-in-law testified that he had known Mussett for twenty-four years, and she was a lesbian.

<sup>3</sup> Boutarfa was serving concurrent prison sentences for tampering with evidence and possession of a controlled substance.

<sup>4</sup> A lieutenant from the jail testified at trial and confirmed that Boutarfa and Cardenas were housed in adjoining cells for two days following Cardenas’s arrest.

<sup>5</sup> Victoria County District Attorney Stephen Tyler testified that Boutarfa sent him a letter, notifying him that members of a local gang syndicate were making plans to “blast [him]” and a judge. Tyler stated that he met with Boutarfa, and Boutarfa’s information proved to be credible. Tyler denied that Boutarfa received any favorable plea or any benefit in exchange for his testimony in the unrelated case.

According to Boutarfa, Cardenas was fixated on the sexual aspect of his interaction with Mussett. Cardenas eventually admitted that “he hit her one time with a skillet,” and killed her. Cardenas “blam[ed]” it on “the ecstasy” and because Mussett would not “submit to his demands to have sex.” On cross-examination, Cardenas asked Boutarfa if he was only testifying to “get parole.” Boutarfa responded that he was already parole eligible and received a notice of release prior to his testifying.

A jury returned a guilty verdict. This appeal followed.

## **II. SUFFICIENCY OF THE EVIDENCE**

In a single issue, Cardenas asserts that there was insufficient evidence to establish that he committed capital murder because the State failed to show that he had “formed the intent to commit the crime of robbery before or during the attack upon the victim.” Cardenas does not, however, contend that there was insufficient evidence to prove the elements of murder.

### **A. Standard of Review and 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. See *Jackson v. Virginia*, 443 U.S. 307, 319 (1979); *Alfaro-Jimenez v. State*, 577 S.W.3d 240, 244 (Tex. Crim. App. 2019) (citing *Hooper v. State*, 214 S.W.3d 9, 13 (Tex. Crim. App. 2007)); *Martinez v. State*, 527 S.W.3d 310, 320 (Tex. App.—Corpus Christi—Edinburg 2017, pet. ref’d). This standard requires the appellate court to defer “to the responsibility of the trier of fact fairly to resolve conflicts in the testimony, to weigh the evidence, and to draw reasonable inferences from basic facts to ultimate facts.” *Zuniga v. State*, 551 S.W.3d 729, 732 (Tex. Crim. App. 2018) (quoting *Jackson*, 443 U.S. at 319).

Each fact need not point directly and independently to guilt if the cumulative force of all incriminating circumstances is sufficient to support the conviction. *Nisbett v. State*, 552 S.W.3d 244, 262 (Tex. Crim. App. 2018) (citing *Hooper*, 214 S.W.3d at 13). Circumstantial evidence is as probative as direct evidence in establishing a defendant's guilt, and circumstantial evidence can alone be sufficient to establish guilt. *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 Cardenas guilty of capital murder if the jury finds beyond a reasonable doubt that he intentionally killed Mussett in the course of robbing or attempting to rob her. See TEX. PENAL CODE ANN. § 19.03(a)(2); *Ibanez v. State*, 749 S.W.2d 804, 807 (Tex. Crim. App. 1986). A person commits robbery if, "in the course of committing theft" and with the "intent to obtain or maintain control of the property," the person "intentionally, knowingly, or recklessly causes bodily injury to another." TEX. PENAL CODE ANN. § 29.02(a)(1). A person commits theft if the person, without the owner's effective consent, appropriates property with the intent to deprive the owner of the property. *Id.* § 31.03(a), (b)(1).

The "nexus element" of capital murder as charged is that the "assault was committed 'in the course of committing theft,' which is defined as 'conduct that occurs in an attempt to commit, during the commission, or in the immediate flight after the attempt or commission of theft.'" *Sorrells v. State*, 343 S.W.3d 152, 158 (Tex. Crim. App. 2011) (quoting TEX. PENAL CODE ANN. § 29.01(1)). "Evidence is sufficient to support a capital murder conviction if it shows an intent to obtain or maintain control of property which was formed before or contemporaneously with the murder." *Shuffield v. State*, 189 S.W.3d

782, 791 (Tex. Crim. App. 2006) (citing *Garrett v. State*, 851 S.W.2d 853, 856 (Tex. Crim. App. 1993)); see *Griffin v. State*, 491 S.W.3d 771, 776 (Tex. Crim. App. 2016) (providing that although murder need not be committed “in furtherance of the underlying felony,” a felony “committed as an afterthought and unrelated to the murder is not sufficient to prove capital murder”). A defendant’s intent may be inferred from his or her actions or conduct. See *Guevara v. State*, 152 S.W.3d 45, 50 (Tex. Crim. App. 2004); *Robertson v. State*, 871 S.W.2d 701, 705 (Tex. Crim. App. 1993).

## **B. Analysis**

Because Cardenas does not dispute on appeal that he caused Mussett’s death, our analysis is limited to whether the State proved Cardenas caused Mussett’s death in the course of committing or attempting to commit robbery.

In furtherance of his sufficiency of the evidence claim, Cardenas asserts that “the evidence points to the conclusion that the victim was not home when [he] was rummaging around for pills,” and his intent to commit serious bodily injury was formed, not in his pursuance of theft, but “to stop the victim from calling 911.” We disagree.

To the extent that Cardenas does not contest his purpose for being at Mussett’s home—to steal drugs, i.e., commit theft—we likewise observe the State presented evidence of such. Julian and Damian testified that Cardenas entered Mussett’s apartment uninvited through a side sliding door, and law enforcement confirmed there were no signs of forced entry. Moreover, Damian testified Cardenas confessed that he was at Mussett’s residence to steal drugs. See *Guevara*, 152 S.W.3d at 50; *Robertson*, 871 S.W.2d at 705. Though Cardenas argues that his assault of Mussett was predicated on preventing her from calling the police, based on these facts, the jury could reasonably conclude that his assault was additionally or alternatively committed “in the course of committing” or



attempting to commit the undisputed theft. See *Sorrells*, 343 S.W.3d at 157. In other words, Cardenas’s acquiesced-to assaultive motivation—preventing Mussett from calling 9-1-1—does not preclude a finding that the nexus element was present between the assault and attempted theft, and the presence of such nexus is all that is required for the jury to find that Cardenas was in the course of committing or attempting to commit a robbery. See *id.*; see also *Febus v. State*, 542 S.W.3d 568, 572 (Tex. Crim. App. 2018) (“A jury may accept one version of the facts and reject another.”).

Based upon the foregoing, the evidence was sufficient for the jury to rationally conclude beyond a reasonable doubt that Cardenas killed Mussett in the course of committing or attempting to commit a robbery. See *Broughton*, 569 S.W.3d at 608; see also *Williams v. State*, No. 14-18-00874-CR, 2020 WL 1026260, at \*3 (Tex. App.—Houston [14th Dist.] Mar. 3, 2020, pet. ref’d) (mem. op., not designated for publication). Cardenas’s sole issue is overruled.

### III. 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  
27th day of August, 2020.