

Not Reported in S.W.3d, 2008 WL 625115 (Tex.App.-Dallas)

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OPINION

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Court of Appeals of Texas,
Dallas.

Kira Lynn DODSON, Appellant

v.

The STATE of Texas, Appellee.

No. 05-07-00649-CR.

March 10, 2008.

On Appeal from the 292nd Judicial District Court Dallas County, Texas, Trial Court Cause No. F05-51859-TV.

[F. Clinton Broden](#), for Kira Dodson.

[Craig Watkins](#), for The State of Texas.

Before Justices [WHITTINGTON](#), [RICHTER](#), and [MAZZANT](#).

OPINION

Opinion By Justice [RICHTER](#).

*1 A jury convicted Kira Lynn Dodson of capital murder, and the trial judge assessed a mandatory life sentence. In two issues, appellant contends the evidence is legally and factually insufficient to support the conviction. We affirm.

BACKGROUND

On April 7, 2005, appellant found her eighteen-month-old daughter, Kaylynn Velasquez, dead in bed. Paramedics transported Kaylynn to a local hospital, where a physician pronounced the time of death. Fourteen days after Kaylynn's death, appellant confessed she had suffocated Kaylynn with a pillow while the baby slept.

Michael Erwin, appellant's boyfriend, testified that the evening before Kaylynn's death, he, appellant, and Kaylynn ate dinner together. Appellant put Kaylynn to bed after dinner, which was their normal routine. Erwin and appellant went to bed a short time later. Erwin awoke between 7:00 and 8:00 the next morning, and appellant was lying in bed next to him getting ready to smoke a cigarette. Appellant said, "[S]omething don't feel right." When Erwin asked appellant if she had checked on the baby, appellant replied, "[N]o, not yet." Appellant got up and went to Kaylynn's room. Erwin heard appellant screaming and went to see what was wrong. Appellant was holding Kaylynn in a blanket as she came out of Kaylynn's room. Appellant dialed 911 on the house phone and spoke to the operator. Paramedics arrived and said Kaylynn was dead. Erwin testified Kaylynn was a normal, healthy, and happy baby the day before she died.

While at the hospital, Erwin told a detective that on March 24, 2005, he was awakened at 2:30 a.m. by appellant screaming there was something wrong with Kaylynn. When Erwin entered the room, he saw Kaylynn lying "halfway off" her bed. Kaylynn was a "bluish-purple" color, and her head was facing the foot of the bed. Erwin called 911. Following instructions of the operator, Erwin got down on his knees and pushed on Kaylynn's stomach. Kaylynn gasped and started crying. Paramedics arrived a few minutes later and transported Kaylynn to a hospital. After several hours at the hospital, they returned home. Erwin also told the detective that the day before Kaylynn died, she was happy and healthy and was with him and appellant when they ran errands all afternoon. After they returned home, appellant was upset because she lost her purse, and she said, "[B]ad things always happen to me." Later that evening, appellant said, "[I] feel like something bad is going to happen." When Erwin asked appellant what she meant, appellant did not respond. Sometime after Kaylynn's funeral, Erwin and appellant went to the police station and wrote out a statement. After Erwin finished his statement, he was told he could go home. He later learned appellant was arrested for murdering Kaylynn.

Dr. Larry Pettit testified Kaylynn was already deceased when she arrived at the hospital on April 7, 2005. Her body was cold and "very stiff," indicating she had been dead for a number of hours. Pettit did not see any obvious external trauma to the skin, and Kaylynn's eyes were still open. The corneas had become "opacified," indicating she had been dead a minimum of three hours. Pettit testified that because Kaylynn was eighteen months old at the time of death, she did not die from sudden infant death syndrome (SIDS). Pettit testified the medical examiner, not a hospital physician, would determine if a child died from SIDS. Pettit did not tell appellant Kaylynn died from SIDS. Pettit testified he was concerned there might be child abuse involved because Kaylynn was brought in after having been dead for several hours. Pettit testified that suffocating an eighteen-month-old child with a pillow would be a "perfect death" because "there are no outward signs of the crime."

*2 Dr. Nicole Hernandez testified that on March 24, 2005, she treated Kaylynn in the emergency room. She was told Kaylynn stopped breathing and turned blue. Hernandez testified Kaylynn had a runny nose, but appeared happy and playful. Hernandez ordered several tests, including a respiratory syncytial virus (RSV) test, a flu test, and a [chest x-](#)

[ray](#). Hernandez testified RSV can be a life-threatening condition in an infant less than six months old. Toddlers, older children, and adults present RSV as a common cold with a runny nose, sometimes accompanied by a fever. Kaylynn's tests were negative. Because Kaylynn had a common cold with cough and an ear infection, Hernandez sent her home with cough medicine and an antibiotic. Hernandez saw no reason why Kaylynn would have died two weeks later.

Jessica Edwards is a Hunt County prosecutor and a foster parent. Edwards testified appellant's son Abraham was placed in her home in August 2003 when he was thirteen months old. Appellant's daughter Kaylynn was born in October 2003. Abraham stayed with Edwards and her husband until May 2004, then he returned to appellant. During the time Abraham lived with Edwards, appellant routinely visited Edwards's home. Both Abraham and Kaylynn spent weekends with Edwards about once a month. Edwards testified she had both Abraham and Kaylynn for a weekend in March 2005. Edwards returned the children to appellant on March 6, 2005. On March 7, 2005, appellant called Edwards and said she could not handle two children anymore. Appellant said that if Edwards wanted Abraham, she would allow Edwards to adopt him. When Edwards picked up Abraham that same day, she asked appellant to sign paperwork that gave full custody of Abraham to Edwards. Appellant signed the papers in front of witnesses and a notary. On March 17, 2005, appellant's parental rights to Abraham were terminated based on her voluntary relinquishment. Edwards picked up Kaylynn on March 18, 2005. At that time, Edwards heard appellant arguing with her mother over the telephone. Appellant said her mother was coming to take her cell phone away because she was angry that appellant had given Abraham to Edwards. Appellant also said she would give Kaylynn to Edwards, but she "didn't want people thinking bad of me for giving my kids up." During that weekend visit, Kaylynn appeared happy, healthy, and playful. When Edwards returned Kaylynn to appellant on March 20, 2005, appellant said her mother had taken away her cell phone.

After Edwards returned Kaylynn to appellant on March 20, 2005, Edwards did not hear from appellant again until appellant's mother called Edwards to tell her Kaylynn was dead. Edwards went to appellant's mother's house and talked with appellant. Appellant told Edwards the police were "mean" to her and were "trying to pin this on me." Appellant gave Edwards a detective's business card and said, "[H]ere, I want you to call and talk to them." Appellant said the doctors at the hospital told her Kaylynn died from SIDS, then appellant asked Edwards what the police looked for "in autopsies on babies that die of SIDS?" Appellant also asked Edwards what the difference was between the autopsies of a baby who suffocated and one who died of SIDS. After Edwards told appellant she believed an autopsy would show a difference between suffocation and SIDS, appellant said Kaylynn had a blanket over her face. Appellant never mentioned a blanket on Kaylynn's face when appellant described how Kaylynn looked when appellant entered the room. Edwards called the detective the next day because of appellant's "nervousness" about the autopsy.

*3 Christy Hall testified she began babysitting Kaylynn when Hall was about sixteen years old. Hall cared for Kaylynn two or three times a month, for periods varying from a

few hours to overnight. Hall testified Kaylynn was a normal, healthy baby. Appellant never said anything to Hall about Kaylynn being sick or having any medical problems, although Hall heard her own mother talking about Kaylynn being hospitalized when she was an infant. Appellant made comments to Hall about wanting a normal life for her age, wanting to “go party,” and not wanting to have children. Two weeks before Kaylynn's death, Hall babysat Kaylynn for an entire day. Hall described Kaylynn as “completely happy and healthy.” Later that evening, appellant asked Hall if she would be able to take Kaylynn if anything happened to appellant. Hall told appellant she was too young to take Kaylynn. At that time, Hall was almost eighteen years of age. The day after this conversation, Hall learned Kaylynn had gone to the hospital. Appellant never told Hall directly why Kaylynn went to the hospital, and Hall never saw Kaylynn again.

Detective Kimberly Mayfield and her supervisor, Sergeant Fred Rich, went to the hospital to investigate Kaylynn's death. Mayfield talked with Erwin, who was standing outside the hospital. Erwin told Mayfield that two weeks before her death, Kaylynn had stopped breathing. After talking with Erwin, Mayfield went into the hospital and talked with the responding officer, an emergency room physician, and appellant. According to Mayfield, appellant was upset and not wanting to answer questions, but did give basic information. Appellant never mentioned that two weeks previously, Kaylynn had been transported to the hospital after she had stopped breathing and was revived. Mayfield decided to wait to have appellant write out a statement. Mayfield and Rich “walked through” appellant's apartment while other officers photographed the premises and collected evidence, including a purple “Princess” pillow, bed sheets, pillowcase, and blanket from Kaylynn's bed, and a medicine bottle. Mayfield testified that within a few days after Kaylynn's death, she talked with Edwards over the telephone. Edwards said appellant voiced concerns that the police were “going to pin Kaylynn's death on her,” as well as about what an autopsy would reveal.

On April 21, 2005, Mayfield met appellant and Erwin at police headquarters to have them write out affidavits, which were routinely requested in child death cases. Because Mayfield and Rich knew Kaylynn had stopped breathing two weeks before her death, they were suspicious that someone might have “smothered” Kaylynn. In separate rooms, Mayfield interviewed appellant and Rich interviewed Erwin. Mayfield asked appellant to write what happened the day Kaylynn died and forty-eight hours prior to Kaylynn's death. Mayfield went in and out of the room while appellant wrote her statement, and also went into the room where Erwin was writing his statement. Another detective was in an observation room watching both appellant and Erwin write their statements. After appellant made corrections to her statement and signed it, appellant went to the waiting area. Mayfield went into the observation room and watched Erwin and Rich. While writing his statement, Erwin received a cell phone call from appellant, who wanted to know where he was and what was taking him so long. Shortly after receiving the call, Erwin finished his statement. As Erwin was going to the waiting room, Rich took appellant into an interview room. Mayfield testified that as she watched Rich talk with appellant, she did not see Rich threaten, yell at, or accuse appellant of murdering Kaylynn. At that time, appellant was free to go and was not in custody. At one point during the interview, Mayfield saw Rich leave the room and return. When Rich returned

to the room, appellant said she trusted him and wanted to tell him something, but she did not want Erwin to know. Appellant told Rich she wanted Erwin to leave first, then she would tell Rich “something.” Rich left the room again, then returned and gave appellant the *Miranda*^{FN1} warning. Appellant wrote a statement that said she had put a pillow over Kaylynn's face while Kaylynn slept and held it down.

[FN1. *Miranda v. Arizona*, 384 U.S. 436 \(1966\).](#)

*4 Detective Fred Rich testified he supervises the child abuse unit of the Dallas police department. Because Kaylynn's body had no physical signs of trauma, the medical examiner would perform an autopsy to determine the cause and manner of death, and it is common to wait for the toxicology results in order to determine a cause of death. On April 21, 2005, appellant and Erwin wrote out “affidavits” detailing what happened the day of Kaylynn's death. Appellant's affidavit was read to the jury. Rich testified that appellant was not in custody either at the time appellant wrote her statement or after she had finished. Appellant went to the waiting room while Erwin finished his statement. Rich was in the room with Erwin when appellant called Erwin's cell phone and asked what was taking so long, how many pages did Erwin write, and what was he writing. Erwin finished writing his statement shortly after receiving the call from appellant. As Erwin went to the waiting room, Rich asked appellant to come back into an interview room. Rich testified he knew there were two detectives in the observation room watching his interview with appellant. Rich asked appellant about Kaylynn's medical history and anything she could tell him about Kaylynn, including if she suspected anyone had done something to Kaylynn. After talking with appellant for about thirty minutes, appellant said, “[I] trust you and I want to tell you the truth about what happened.” Rich stopped the interview, read appellant the *Miranda* warning, had appellant sign a card indicating she understood her rights, and asked appellant if she still wanted to talk to him. Appellant said she wanted Rich to send Erwin home first and then she would talk more. Rich went to the waiting room, told Erwin he could leave, and returned to appellant. Appellant wrote out a voluntary statement. Rich testified he had a civilian witness come into the room, after which Rich read appellant's statement out loud. Appellant said there were no changes she wanted to make to her statement. Appellant signed the statement, then the witness signed it. Appellant's statement was read to the jury. In her statement, appellant said, among other things, (1) “I sent Kaylynn to a better place away from the hurt and put-outs that my family and everyone else had to offer my children,” (2) “I placed the pillow over her face in her sleep and held it down and I hated myself every minute,” and (3) “I just felt this was Kaylynn's only peaceful way out.” After appellant signed the statement, Rich arrested her and took her to the jail.

Rich testified SIDS occurs in infants from three months to almost one year of age. Because Kaylynn was eighteen months old when she died, he ruled out death from SIDS. Rich testified that during his interview with appellant, he never accused her of putting a pillow over Kaylynn's face and never raised his voice. Appellant volunteered that she put a pillow over Kaylynn's face. During his interview with Erwin, Rich told Erwin there was a possibility Kaylynn was suffocated to see how Erwin would react. Rich never directly accused appellant of killing Kaylynn when talking to Erwin. Rich testified he has never

received a false confession, and he believes some individuals may make false confessions to obtain notoriety.

*5 Dr. Joni McClain, who performed an autopsy on Kaylynn, testified there were no external injuries to Kaylynn's body. Kaylynn was a well-developed, well-nourished, and healthy eighteen month old child. An internal exam revealed a few "[petechiae](#)" in the thymus gland. [Petechiae](#), which are pinpoint hemorrhages on an organ and can be on different parts of the body, are a nonspecific finding, but can be consistent with an asphyxial death. [Asphyxia](#), or the lack of oxygen, is the same as suffocation. McClain found some [swelling of the brain](#), which is also consistent with, but not necessarily diagnostic of, a suffocation-type death. McClain testified she found no evidence of infection in the body or [asthma](#). Toxicology results were negative, meaning that at the time of her death, there were no medications in Kaylynn's body. McClain testified SIDS did not apply in this case because Kaylynn was eighteen months old. In this case, McClain determined the cause of death was suffocation and the manner of death was homicide. McClain testified that had there not been a confession, the cause and manner of death would have been listed as "undetermined."

Dr. Christian Meissner, an assistant professor of psychology and criminal justice, testified on appellant's behalf as an expert on false confessions. According to Meissner, interrogation techniques that lead to gaining a true confession from a guilty person may also lead to receiving a false confession from an innocent person. Generally, the interrogation process contains three phases: isolating the suspect in a room and building rapport phase, confrontation phase, and minimizing the suspect's perception of the consequences phase. There are several factors that may determine whether an individual gives a false confession, including the suspect's age, the length of time the suspect is interrogated, and whether interrogation takes place in the middle of the day as opposed to the middle of the night. Meissner also testified his career has been as an academic, he had no experience in conducting law enforcement investigations, and he could not tell the jury whether appellant's confession was true or false.

Appellant testified she did not kill Kaylynn and that Rich had coerced her into writing a false confession. Appellant had her son Abraham when she was sixteen years old, and had Kaylynn thirteen months later. She allowed Edwards to adopt Abraham on March 7, 2005. Early in Kaylynn's life, Kaylynn had "respiratory and digestive" problems. Kaylynn had been diagnosed with [asthma](#) and used an inhalant at one time. On March 24, 2005, appellant awoke in the middle of the night to use the bathroom. She found Kaylynn in her bed "unresponsive." Appellant screamed for Erwin, who called 911. After Kaylynn was revived, she was transported to the hospital. On the day before Kaylynn died, appellant did not tell Erwin something bad was going to happen; she only said bad "stuff was happening" to her after she lost her purse. That evening, she cooked dinner and ate with Kaylynn and Erwin. After dinner, she put Kaylynn to bed with a bottle containing apple juice. She cleaned up her area, smoked a cigarette, and went to bed. Appellant was awakened by Erwin's cell phone. It was after 7:00 a.m. While Erwin was in the bathroom, appellant had an "eerie feeling." Erwin told her to go check on Kaylynn. Appellant ran to Kaylynn's room and found her lying on the bed with a baby blanket "halfway" on her

face. Appellant tried to “wake her,” but Kaylynn did not wake up. Appellant called 911. The operator told appellant to place Kaylynn on a hard surface and do CPR. Appellant testified Kaylynn appeared to be dead even before she picked her up from the bed. Paramedics arrived and took Kaylynn to a hospital. A nurse at the hospital said SIDS could have caused Kaylynn's death.

*6 On April 21, 2005, appellant and Erwin went to the police station to give written statements. They were put in separate rooms, and she was asked to describe events two days before she found Kaylynn dead. Mayfield said she could go back to the waiting room after she was finished. When appellant asked Mayfield about the autopsy results, Mayfield said her supervisor would be out to talk to appellant. Appellant waited “a while” for Erwin to finish, then borrowed a woman's cell phone and called Erwin's cell phone to ask what was taking him so long. Erwin said he was almost done. After she hung up, Rich came to the waiting area and took appellant to an interview room. Appellant thought he was going to return Kaylynn's blanket and pillow and go over the autopsy report. According to appellant, Rich acted angry, slammed his hand on the table, and raised his voice at times. Rich repeatedly said, “[D]on't you want to tell me?” and that he knew Kaylynn had been suffocated because he had read the autopsy report. Rich said he knew appellant “did it.” While he talked to her, sometimes Rich would stand over her and sometimes he would sit down. After about thirty minutes, appellant wrote out the confession because she was forced to write it.

Appellant denied telling Hall she did not want to be a mother. Appellant testified her family did not want her to give up Abraham for adoption and was very upset when she did so. On the day before her death, Kaylynn had a “regular cough and cold” but was “fine and eating and playing.” Appellant admitted that when she talked with Mayfield at the hospital the day Kaylynn died, she did not tell Mayfield Kaylynn had stopped breathing two weeks earlier. Appellant denied she told Edwards the police were “trying to pin it on me,” but remembered saying the police were “coming after me.” Appellant testified her written confession contained “lies” because Rich made her believe she had killed Kaylynn. Appellant admitted that in her first written statement, she never said there was a blanket on Kaylynn's face nor did she mention a call on Erwin's cell phone woke her on the morning she found Kaylynn in bed dead.

APPLICABLE LAW

In reviewing a challenge to the legal sufficiency of the evidence, we examine the evidence in the light most favorable to the judgment and determine whether 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); *Lane v. State*, 151 S.W.3d 188, 191-92 (Tex.Crim.App.2004). The standard is the same for both direct and circumstantial evidence cases. See *Burden v. State*, 55 S.W.3d 608, 613 (Tex.Crim.App.2001); *Bates v. State*, 155 S.W.3d 212, 215 (Tex.App.-Dallas 2004, no pet.). The fact-finder is the exclusive judge of the witnesses' credibility and the weight to be given to their testimony. *Harvey v. State*, 135 S.W.3d 712, 717 (Tex.App.-Dallas 2003, no pet.).

*7 In a factual sufficiency review, an appellate court views all of the evidence in a neutral light to determine whether the fact-finder's verdict of guilt was rationally justified. See [Roberts v. State](#), 220 S.W.3d 521, 524 (Tex.Crim.App.2007), cert. denied, 128 S.Ct. 282 (U.S.2007); [Watson v. State](#), 204 S.W.3d 404, 415 (Tex.Crim.App.2006); see also [Marshall v. State](#), 210 S.W.3d 618, 625 (Tex.Crim.App.2006), cert. denied, 128 S.Ct. 87 (U.S.2007). Unless the record clearly reveals a different result is appropriate, we must defer to the fact-finder's determination concerning what weight to be given to contradictory testimony. [Johnson v. State](#), 23 S.W.3d 1, 8 (Tex.Crim.App.2000).

To obtain a capital murder conviction, the State was required to prove beyond a reasonable doubt that appellant intentionally or knowingly caused the death of Kaylynn Velasquez, a person under six years of age, by suffocating Velasquez with a pillow, a deadly weapon. See [TEX. PEN.CODE ANN. §§ 19.02\(b\)\(1\), 19.03\(a\)\(8\)](#) (Vernon 2003 & Supp.2007).

DISCUSSION

Appellant argues the evidence is legally and factually insufficient to satisfy the rule of corpus delicti because her extra-judicial confession alone is insufficient to sustain the capital murder conviction. Appellant asserts no other evidence corroborates her false confession or shows a crime occurred. The State responds that the evidence is legally and factually sufficient to show an offense occurred and to support appellant's conviction.

The corpus delicti doctrine requires that evidence independent of an accused's extra-judicial confession shows the “essential nature” of the charged crime was committed by someone. See [Bible v. State](#), 162 S.W.3d 234, 246 (Tex.Crim.App.2005). Some evidence, independent of appellant's statements, must show the crime actually occurred, though the independent evidence does not have to identify the accused as the culprit. See [Salazar v. State](#), 86 S.W.3d 640, 644-45 (Tex.Crim.App.2002). All that is required is that some evidence makes the commission of the offense more probable than it would be without the evidence. See [Cardenas v. State](#), 30 S.W.3d 384, 390 (Tex.Crim.App.2000).

There was evidence presented to the jury supporting the State's theory of the case that appellant no longer wanted the responsibility of being a parent, so she suffocated Kaylynn. Several witnesses testified that Kaylynn appeared “healthy, happy, and playful” two weeks before her death. Although Kaylynn had an episode where she stopped breathing, was revived, and then taken to a hospital two weeks before her death, Erwin, Edwards, Hall, and Hernandez testified Kaylynn was healthy and happy. Hernandez also testified that after sending Kaylynn home from the hospital with cold medicine and an antibiotic for an ear infection, she saw no reason why Kaylynn should be dead two weeks later. McClain found no evidence of infection or [asthma](#) during the autopsy, and testified Kaylynn appeared to be a healthy, well-developed and well-nourished child. And Pettit, the emergency room doctor who pronounced the time of Kaylynn's death, testified that suffocating an eighteen-month-old child with a pillow would be a “perfect death” because there would be no outward signs of the “crime.”

*8 Both Edwards's and Hall's testimony provided evidence that appellant no longer wanted the responsibility of being a parent. Appellant told Edwards she could not care for two children and that Edwards could adopt her son if Edwards wanted him. Edwards also testified that while talking to appellant on the day Kaylynn died, appellant voiced concerns about whether an autopsy could differentiate between a SIDS death or suffocation. And, appellant made comments to Hall that she wished she could have a "normal life" and did not want to have children.

Appellant maintains she was coerced by Rich into believing she had suffocated Kaylynn with a pillow. Both Rich and Mayfield testified there was no coercion or threats of any kind and appellant voluntarily confessed to suffocating her daughter with a pillow. The jury is in the best position to evaluate the credibility of the witnesses and the evidence, and we must afford due deference to its determination. *See* [Marshall, 210 S.W.3d at 625](#); *see also* [TEX.CODE CRIM. PROC. ANN. art. 38.04](#) (Vernon 1979). The jury was free to accept or reject any and all of the evidence presented by either side. *See* [Wesbrook v. State, 29 S.W.3d 103, 111 \(Tex.Crim.App.2000\)](#).

After reviewing all of the evidence, we conclude there is sufficient evidence, independent of appellant's confession, of the corpus delicti of the murder offense, and that reviewing all of the evidence under the appropriate standards, we conclude it is legally and factually sufficient to support appellant's capital murder conviction. *See* [Roberts, 220 S.W.3d at 524](#); [Lane, 151 S.W.3d at 191-92](#); [Salazar, 86 S.W.3d at 644-45](#). We overrule appellant's points of error.

We affirm the trial court's judgment.

Tex.App.-Dallas,2008.

Dodson v. State

Not Reported in S.W.3d, 2008 WL 625115 (Tex.App.-Dallas)

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