

NO. _____

**IN THE COURT OF CRIMINAL APPEALS
FOR THE STATE OF TEXAS**

**GEORGE DELACRUZ,
PETITIONER**

VS.

**THE STATE OF TEXAS,
RESPONDENT**

**APPELLANT'S PETITION FOR DISCRETIONARY REVIEW
OF THE DECISION IN THE THIRD COURT OF APPEALS
CAUSE NO. 03-15-00302-CR**

FILED IN
COURT OF CRIMINAL APPEALS

May 22, 2017

ABEL ACOSTA, CLERK

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ORAL ARGUMENT IS RESPECTFULLY REQUESTED

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STATEMENT REGARDING ORAL ARGUMENT

Petitioner has raised important questions of first impression in this Court and believes that oral argument would help clarify the issues presented in his petition for discretionary review. Therefore he respectfully requests oral argument.

IDENTITY OF JUDGE, PARTIES AND COUNSEL

Trial Judge: The Honorable Clifford A. Brown, 147th Judicial District
Court of Travis County, Texas

Parties and Counsel:

(a) the State of Texas represented by:

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**TO THE HONORABLE JUDGES OF THE COURT OF CRIMINAL
APPEALS:**

NOW COMES George Delacruz, Petitioner in this cause by and through his attorney, Linda Icenhauer-Ramirez, and, pursuant to the provisions of Tex.R.App.Proc. 66, et seq., moves this Court to grant discretionary review, and in support will show as follows:

STATEMENT OF THE CASE

Petitioner was indicted in this cause on September 13, 2013 for two counts of murder. (C.R. 7-8) On April 22, 2015, after hearing the evidence and argument of both the State and the defense, the jury found Petitioner guilty of the offense of murder. (R.R. VIII, pp. 79-80; C.R. 139-145) On April 23, 2015, after hearing the evidence and argument from counsel, the jury assessed Petitioner's punishment at life imprisonment. Petitioner was sentenced that day. (R.R. IX, pp. 41-43; C.R. 146-151, 162-163)

Petitioner filed a motion for new trial on April 28, 2015. (C.R. 169-170) Notice of appeal was filed on April 28, 2015. (C.R. 171) The trial court's certification of defendant's right to appeal was filed on April 23, 2015. (C.R. 153)

STATEMENT OF THE PROCEDURAL HISTORY

On April 21, 2017, the Third Court of Appeals handed down an opinion in this case. Delacruz v. State, 2017 Tex.App. LEXIS 3563, No. 03-15-00302-CR, Tex.App.-Austin, delivered April 21, 2017). No motion for rehearing was filed. The petition for discretionary review is due to be filed on or before May 22, 2017.

GROUND FOR REVIEW NUMBER ONE

IN A MURDER CASE, WHERE THERE IS NO BODY, NO DIRECT EVIDENCE OF A DEATH AND NO DIRECT EVIDENCE TO SHOW THAT PETITIONER ACTED EITHER INTENTIONALLY OR KNOWINGLY IN CAUSING THE ALLEGED VICTIM'S DEATH OR ACTED WITH INTENT TO CAUSE SERIOUS BODILY INJURY AND COMMITTED AN ACT CLEARLY DANGEROUS TO HUMAN LIFE THAT CAUSED THE ALLEGED VICTIM'S DEATH, MUST THE STATE PROVE A "FATAL ACT OF VIOLENCE" IN ORDER TO CONVICT A PERSON OF MURDER?

GROUND FOR REVIEW NUMBER TWO

THE COURT OF APPEALS ERRED IN FINDING THE EVIDENCE SUFFICIENT TO SUPPORT PETITIONER'S CONVICTION FOR MURDER WHEN THE STATE FAILED TO PROVE BEYOND A REASONABLE DOUBT THAT THE ALLEGED VICTIM WAS DECEASED AND THAT HER DEATH WAS CAUSED BY A CRIMINAL ACT OF PETITIONER.

GROUND FOR REVIEW NUMBER THREE

DID THE COURT OF APPEALS ERR IN FINDING THE EVIDENCE SUFFICIENT TO SUPPORT PETITIONER'S CONVICTION?

In its opinion, the panel of the Third Court of Appeals found the circumstantial evidence sufficient to support Petitioner's conviction for murder and specifically found that the evidence was sufficient to support a finding that:

“Petitioner (1) intentionally or knowingly caused Julie's death or (2) intended to cause her serious bodily injury and committed an act clearly dangerous to human life that caused her death. *See* Tex. Penal Code Sec. 19.02(b)(1), (2).” 2017 Tex.App.LEXIS 3563 at *71-72.

The Court then went on to list factors that supported its conclusion:

- (1) Petitioner had a motive and opportunity to kill Julie;
- (2) Petitioner was physically and verbally abusive and controlling towards Julie during their marriage;
- (3) Petitioner became emotionally unstable when she left him and adamantly opposed their divorce;
- (4) Petitioner threatened her, stalked her, and engaged in irrational behavior such as threatening suicide and feigning amnesia for several weeks;
- (5) Shortly before Julie disappeared, Petitioner's unstable behavior escalated to rage as reflected in his social-media postings and emails to Julie;
- (6) Petitioner did not engage in his usual gaming activity around the time Julie disappeared;
- (7) Petitioner arranged for Julie to come pick up their daughter at his house when no one else would be around;
- (8) Petitioner was the last person to see her alive;
- (9) Petitioner had scratches on his face the afternoon that Julie disappeared;
- (10) There was evidence that Petitioner dug "grave-like" holes in his backyard around the time of Julie's disappearance.

The Court went onto list factors that showed that Petitioner engaged in behavior that indicated a consciousness of guilt:

- (1) Petitioner possessed Julie's phone after her disappearance and was responsible for numerous messages sent from her phone indicating that she had voluntarily left the state with another man;
- (2) Petitioner possessed and used Julie's credit card to buy items for himself and their child after her disappearance;
- (3) Petitioner made numerous misleading and inconsistent statements to law enforcement, his family, neighbors and Julie's family and failed to disclose crucial information to those individuals;

Finally the Court listed other evidence that it labeled "incriminating":

- (1) Petitioner signed the waiver of service for Julie's divorce petition three days after she disappeared after refusing to sign it for months;
- (2) Items belonging to Julie were found at Petitioner's house including her insurance card;

- (3) Petitioner’s “highly uncharacteristic period of gaming inactivity coincided with the hours in which Julie went missing”;
- (4) A county jail inmate testified that Petitioner had “admitted to an act of physical violence against Julie ‘over some other guy that she was talking to’ at his home that had left her bloodied and unconscious.”

Petitioner would assert that these suspicious behaviors are indicative of guilt and sufficient to support a conviction for murder only when they are linked to wrongful conduct – “a fatal act” perpetrated by Petitioner against the alleged victim. In Petitioner’s case the State adduced no evidence of a fatal act. Although the State put on a jail house snitch who testified that Petitioner told him about an incident where he struggled with a woman and she fell and hit her head on a counter and was rendered unconscious, that testimony does not prove a “fatal act” perpetrated by Petitioner against the victim. First, there was no evidence adduced that the woman he struggled with was the alleged victim.¹ Second, that evidence in no way proved an intentional or knowing act by Petitioner that showed he intended to cause her death nor did it show that Petitioner intended to cause serious bodily injury to the alleged victim and committed an act that was clearly dangerous to her life.

The opinion in Petitioner’s case is puzzling in that it was handed

¹ See Ground For Review Number Four which sets out the inaccuracies of the Court of Appeals opinion recounting of that testimony.

down by the Third Court of Appeals several months after that Court handed down the opinion in the case of Nisbett v. State, 2016 Tex.App.LEXIS 13252 (Tex.App.-Austin, December 15, 2016, pet. pending). Nisbett is a case very similar to Petitioner's case. Nisbett's wife went missing under suspicious circumstances and was missing for twenty years before Nisbett was charged with her murder. Her body was never found, the evidence strongly suggested that something bad had happened to her and the evidence also showed that Nisbett had engaged in suspicious behavior around the time of her disappearance. Nisbett was tried and convicted of the murder of his wife. Much of the same type of evidence that was used as circumstantial evidence against Petitioner was used against Nisbett. On appeal, the panel of Third Court of Appeals reversed Nisbett's conviction on the basis of insufficient evidence. The Nisbett opinion contains the following language:

“The corpus delicti of murder is established if the evidence shows the death of a human being caused by the criminal act of another.’ *McDuff*, 939 S.W.2d at 615. Here, the State's evidence failed to show that Vicki's alleged death resulted from a criminal act of appellant. Even if it can be inferred that Vicki is dead, there is no evidence of the criminal act that caused Vicki's death or that appellant perpetrated that criminal act. The circumstantial evidence presented by the State raised only suspicion about appellant; it did not demonstrate a criminal act nor support an inference of such. There is no evidence, direct or circumstantial, to prove beyond a reasonable doubt that appellant caused Vicki's death – an

essential element of the offense. Thus, the evidence failed to establish the *actus reus* of the charged murder offense.

“Furthermore, even if we accept the inference that Vicki is dead, and the further speculative inference that appellant somehow caused her death by some unknown and unidentified act, the evidence remains insufficient to support appellant’s conviction for murder. The evidence failed to demonstrate that appellant committed such fatal act with the requisite *mens rea*. The *mens rea* element of the offense of murder – as charged in the indictment here – required proof that appellant *intentionally or knowingly* caused Vicki’s death by a manner and means unknown or that *with intent to cause serious bodily injury to Vicki* appellant committed an act clearly dangerous to human life, by an unknown manner and means, that caused Vicki’s death. See Texas Penal Code Sec. 19.02(b)(1), (2). The State was required to prove that appellant possessed one of the alternate mental states to satisfy the element of intent under the murder statute. See *Stobaugh*, 421 S.W.3d at 861; see, e.g., *Jefferson*, 189 S.W.3d at 313.

...

“Evidence and facts from which to infer appellant’s mental state do not exist in the record before us. As discussed previously, the State failed to present evidence of precisely what fatal act appellant committed. Without evidence of how appellant caused Vicki’s death, his mental state cannot be gleaned from the act or conduct itself or any associated words. Vicki’s body has never been found and no autopsy has been performed, so no evidence exists concerning the types of injuries purportedly inflicted upon Vicki. Without evidence of the injuries, there is no way to discern the method of producing fatal injuries, how such injuries were inflicted, or the extent of the injuries. Thus, the jury could not infer appellant’s mental state from facts relating to the injuries as none were shown. Further, the record contains no evidence that a deadly weapon was used; thus, no deadly-weapon facts exist from which the jury could infer appellant’s intent. There are simply no facts from which the jury could infer appellant’s intent. No evidence in the record supports the inference that appellant

intentionally or knowingly caused Vicki's death or with intent to cause serious bodily injury to Vicki committed a clearly dangerous act that caused her death." Nisbett, 2016 Tex.App.LEXIS 13252 at *45-48.

Petitioner would assert that just as in Nisbett, even if the jury could have inferred that something happened to the alleged victim in Petitioner's case and could have further inferred that Petitioner was responsible for that something and even that the "something" caused the alleged victim's death, there were no facts or circumstances from which the jury could have reasonably inferred that while that something was occurring, Petitioner possessed the requisite *mens rea* to support a conviction for murder.

Petitioner asserts that the Court of Appeals erred in finding the evidence sufficient to support his conviction for murder, specifically that the evidence was sufficient to prove the *mens rea* as alleged in the indictment. Clearly the Third Court of Appeals holding in Nisbett conflicts with the holding of a different panel of the Third Court of Appeals in Petitioner's case and the Court of Criminal Appeals needs to resolve this conflict. Tex.R.App.Proc. 66.3(a).

Petitioner would also ask the Court to reconcile the Third Court of Appeals opinion in his case with the Court of Criminal Appeals opinion in Walker v. State, 2016 Tex.Crim.App.Unpub.LEXIS 973 (Tex.Cr.App. October 19, 2016). In Walker, the Walkers were convicted of injury to a

child where it was alleged that they caused second-degree burns to their grandchild by immersing her legs and feet in hot liquid. In Walker, the Court stressed that juries are permitted to make reasonable inferences from facts supported by the evidence but are not permitted to come to conclusions based on mere speculation or unsupported inferences or presumptions. The Court then reviewed the evidence and wrote that none of the nineteen witnesses who were called to testify could testify as to what actually happened, who was present when the injuries occurred and who was at fault. Although several experts from both sides gave competing opinions as to how the child was injured and whether the injuries were intentionally inflicted, the Court ended up writing:

“Given the number of outstanding questions about whether the injury was accidental or intentionally inflicted, how this alleged offense might have been committed, and who might have committed it, we conclude that a rational jury would have had at most only a strong suspicion of guilt under these circumstances.” 2016 Tex.Crim.App.Unpub.LEXIS 973 at *16.

The Court in Walker went on to write that when reviewing the legal sufficiency of the evidence, the reviewing court is not required to decide “what happened,” but the reviewing court must be satisfied that a jury could rationally decide what happened beyond a reasonable doubt. Petitioner would assert that the state of the evidence in his case left a number of

outstanding questions that a jury could not have determined beyond a reasonable doubt – whether the alleged victim is in fact deceased; if she is dead, how she died; what caused her death, and who caused her death. The holding of the Third Court of Appeals in Petitioner’s case appears to be in conflict with the holding of the Court of Criminal Appeals in Walker v. State, supra. Petitioner asserts that the Third Court of Appeals has decided an important question of state law in a way that conflicts with Walker, a decision of the Court of Criminal Appeals and would ask the Court to grant discretionary review in his case and resolve this conflict. Tex.R.App.Proc. 66.3(c).

Finally Petitioner asserts that the panel of the Third Court of Appeals has so far departed from the accepted and usual course of judicial proceedings as to call for an exercise of the Court of Criminal Appeals’ power of supervision. Tex.R.App.Proc. 66.3(f). These grounds for review should be granted.

GROUND FOR REVIEW NUMBER FOUR
**THE COURT OF APPEALS RENDITION OF CRUCIAL EVIDENCE
IN ITS OPINION WAS ERRONEOUS AND THE COURT OF
APPEALS RELIED ON THIS ERRONEOUS RENDITION OF THE
EVIDENCE IN FINDING THE EVIDENCE SUFFICIENT TO
SUPPORT PETITIONER'S CONVICTION.**

As noted above, this was a murder case based solely on circumstantial evidence. The alleged victim's body was never found. There was no evidence establishing a cause of death. The investigation never revealed a crime scene. All of the law enforcement officers who testified admitted during their testimony that there was no proof that the alleged victim was deceased. They also all admitted that if in fact the alleged victim was dead, they had no proof that Petitioner either intentionally or knowingly did anything to cause her death or that if he did cause some harm to the alleged victim that he committed an act clearly dangerous to human life and that at the time he had the intent to cause her serious bodily injury. And so a crucial part of the State's case was the testimony of a jailhouse snitch named Justin Stewart. Stewart testified that he was an inmate at the Travis County Correctional Center in 2013 when he met Petitioner who was housed in his tank. Stewart testified that one day he asked Petitioner how he was doing and Petitioner said he felt bad about something. Petitioner went on to tell Stewart that he had had an altercation with a girl with whom he had had a child. Petitioner told Stewart that he and the girl had an argument about a

guy the girl had been talking to. Petitioner told Stewart that when the girl tried to leave, he tried to stop her and they had a physical fight. Petitioner told Stewart that they wrestled and at one point they both fell and the girl hit her head on a counter or something. Stewart testified that the girl was apparently bleeding. Petitioner said that the girl told Petitioner she was going to call someone and Petitioner said he stopped her. Petitioner told Stewart that the girl lost consciousness and Petitioner said that he did not know what to do. Stewart told the jury that was all Petitioner told him and he told the jury that Petitioner was in tears as he told the story. (R.R. VII, pp. 7-16, 32-34)

In its opinion the Court of Appeals uses Stewart's testimony as a key piece of the evidence incriminating Petitioner but it repeatedly erroneously describes the evidence in ways that make it sound far more definite and incriminating than it actually was. For example the Court of Appeals wrote in its opinion a heading that reads: "**32. Delacruz described a violent altercation with Julie to a fellow inmate**". The opinion goes on to say that Petitioner "described an altercation that occurred between Julie and himself in which she hit her head, was bleeding and became unconscious." Delacruz v. State, supra at *68. A review of Stewart's testimony shows that Stewart never testified that Petitioner told him the girl in the story was Julie.

Again under the heading “**4. Other incriminating evidence**”, the Court of Appeals wrote:

“Finally, Stewart testified that Delacruz had admitted to an act of physical violence against Julie ‘over some other guy that she was talking to’ at his home that had left her bloodied and unconscious.” Delacruz v. State, supra at *77.

This statement is erroneous on two important points. First, Stewart never testified that Petitioner named the girl in the altercation as Julie. Second, Stewart never testified that Petitioner told him the incident occurred at his home. These are two crucial misstatements that the opinion uses as inferences to support Petitioner’s conviction. But they are erroneous because Stewart, the jailhouse snitch, never testified to those two key items.

While it is true that in some cases, a verdict of guilty may be supported by reasonable inferences from the evidence, Petitioner would assert that where the appellate court misconstrues the evidence and erroneously sets out the evidence, the inferences from the use of that erroneously construed evidence are not reasonable and cannot be used to support a finding that the evidence is sufficient to support a conviction based solely upon circumstantial evidence. The Court of Criminal Appeals needs to grant review in this case because the Court of Appeals has so far departed from the accepted and usual course of judicial proceedings as to call for an exercise of the Court of Criminal Appeals’ power of supervision.

Tex.R.App.Proc. 66.3(f). This ground for review should be granted.

PRAYER FOR RELIEF

WHEREFORE, PREMISES CONSIDERED, Petitioner respectfully prays that this Honorable Court grant Appellant's Petition for Discretionary Review, and after full briefing on the merits, issue an opinion reversing the decision of the Court of Appeals.

Respectfully submitted,

/s/ Linda Icenhauer-Ramirez
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ATTORNEY FOR PETITIONER

CERTIFICATE OF COMPLIANCE

I hereby certify that this petition for discretionary review contains 3801 words, as calculated by the word count function on my computer and is prepared in Times New Roman 14 point font.

/s/ Linda Icenhauer-Ramirez
LINDA ICENHAUER-RAMIREZ

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of Petition for Discretionary Review was e-served to the office of the State Prosecuting Attorney and e-served to Mr. Scott Taliaferro of the Travis County District Attorneys Office on this 22nd day of May, 2017.

/s/ Linda Icenhauer-Ramirez
LINDA ICENHAUER-RAMIREZ

APPENDIX

Delacruz v. State, 2017 Tex.App.LEXIS 3563, No. 03-15-00302-CR, Tex.App.-Austin, delivered April 21, 2017)

Document: Delacruz v. State, 2017 Tex. App. LEXIS 3563

Delacruz v. State, 2017 Tex. App. LEXIS 3563

Copy Citation

Court of Appeals of Texas, Third District, Austin

April 21, 2017, Filed

NO. 03-15-00302-CR

Reporter

2017 Tex. App. LEXIS 3563 *

George Delacruz, Appellant v. The State of Texas, Appellee

Notice: PLEASE CONSULT THE TEXAS RULES OF APPELLATE PROCEDURE FOR CITATION OF UNPUBLISHED OPINIONS.

Prior History: [*1] FROM THE DISTRICT COURT OF TRAVIS COUNTY, 147TH JUDICIAL DISTRICT. NO. D-1-DC-13-900252, HONORABLE CLIFFORD A. BROWN ▼, JUDGE PRESIDING.

Disposition: Count 1 Murder: Modified and, as Modified, Affirmed. Count 2 Murder: Reversed and Dismissed.

Core Terms

phone, disappearance, message, posted, confirmed, murder, morning, love, picked, hole, night, talk, divorce, records, always, texts, missing, searched, excited, cousin, wasn't, guilt, days, shed, credit card, friends, planned, witness testimony, law enforcement, apartment

Case Summary

Overview

HOLDINGS: [1]-The evidence was sufficient to support defendant's murder conviction under [Tex. Penal Code Ann. § 19.02\(b\)](#) for killing his estranged wife because there was evidence demonstrating defendant's motive, intent, plan, preparation, concealment and extensive fabrication **of** evidence, defendant's inconsistent, false and misleading statements, defendant's statements about having committed a violent act against his wife, and substantial evidence establishing that his wife was dead; [2]-Because defendant was convicted **of** more offenses than were authorized by the indictment and the jury charge, as they permitted the jury to convict defendant under either **of** two alternative theories or murder and the jury returned a general verdict **of** guilty without indicating which subsection **of** [§ 19.02\(b\)](#) it relied upon, the **court** reversed and dismissed the judgment **of** conviction in count two.

Outcome

Judgment affirmed in part as modified, judgment reversed in part and dismissed.

▼ LexisNexis® Headnotes

Criminal Law & Procedure > ... > [Standards of Review ▼](#) > [Substantial Evidence ▼](#) > [Sufficiency of Evidence ▼](#)

HN1  When reviewing the sufficiency **of** the evidence to support a conviction, an appellate **court** considers all the evidence in the light most favorable to the verdict to determine whether, based on the evidence and reasonable inferences therefrom, any rational jury could have found the essential elements **of** the offense beyond a reasonable doubt. [🔍 More like this Headnote](#)

[Shepardize - Narrow by this Headnote \(0\)](#)

Criminal Law & Procedure > [Juries & Jurors ▼](#) > [Province of Court & Jury ▼](#) > [Credibility of Witnesses ▼](#)

Criminal Law & Procedure > [Juries & Jurors ▼](#) > [Province of Court & Jury ▼](#) > [Weight of Evidence ▼](#)

HN2⚡ The jury is the sole judge **of** the weight and credibility **of** the evidence and may believe all, some, or none **of** a witness's testimony. [Tex. Code Crim. Proc. Ann. art. 38.04](#). The appellate **court** may not re-evaluate the weight and credibility **of** the evidence and substitute its judgment for that **of** the jury. The appellate **court** defers to the jury's resolution **of** any conflicting inferences from the evidence and presumes that it resolved such conflicts in favor **of** the judgment. [🔍 More like this Headnote](#)

[Shepardize](#) - Narrow by this Headnote (0)

Criminal Law & Procedure > ... > [Standards of Review](#) ▼ > [Substantial Evidence](#) ▼ >

[Sufficiency of Evidence](#) ▼

Evidence > [Admissibility](#) ▼ > [Circumstantial & Direct Evidence](#) ▼

Evidence > [Types of Evidence](#) ▼ > [Circumstantial Evidence](#) ▼

HN3⚡ An appellate **court** must determine whether the inferences necessary to support the verdict are reasonable in light **of** the cumulative force **of** all **of** the evidence, including both direct and circumstantial evidence. It is not necessary that the evidence directly proves the defendant's guilt; circumstantial evidence is as probative as direct evidence in establishing the guilt **of** the actor, and circumstantial evidence alone can be sufficient to establish guilt. Each fact need not point directly and independently to guilt if the cumulative force **of** all incriminating circumstances is sufficient to support the conviction. [🔍 More like this Headnote](#)

[Shepardize](#) - Narrow by this Headnote (0)

Criminal Law & Procedure > ... > [Standards of Review](#) ▼ > [Substantial Evidence](#) ▼ >

[Sufficiency of Evidence](#) ▼

HN4⚡ Reversal on evidentiary sufficiency grounds is restricted to the rare occurrence when a factfinder does not act rationally. The appellate scales are weighted in favor **of** upholding a trial **court's** judgment **of** conviction. [🔍 More like this Headnote](#)

[Shepardize](#) - Narrow by this Headnote (0)

Criminal Law & Procedure > ... > [Standards of Review](#) ▼ > [Substantial Evidence](#) ▼ >

[Sufficiency of Evidence](#) ▼

Evidence > [Types of Evidence](#) ▼ > [Circumstantial Evidence](#) ▼

Evidence > [Admissibility](#) ▼ > [Circumstantial & Direct Evidence](#) ▼

HN5⚡ Circumstantial evidence alone is sufficient to establish guilt, and the standard **of** review on **appeal** is the same for both direct-and-circumstantial-evidence cases. In deciding the sufficiency **of** the evidence, the appellate **court** must look at events occurring before, during, and after the commission **of** the offense and may rely on actions **of** the defendant which show an understanding and common design to do the prohibited act. Each fact need not point directly and independently to the guilt **of** the appellant, as long as the cumulative effect **of** all the

incriminating facts is sufficient to support the conviction. [More like this Headnote](#)

[Shepardize - Narrow by this Headnote \(0\)](#)

Evidence > [Types of Evidence](#) > [Circumstantial Evidence](#)

Criminal Law & Procedure > [Criminal Offenses](#) > [Homicide, Manslaughter & Murder](#) >

[Murder](#)

HN6 Although motive and opportunity are not elements of murder and are not alone sufficient to prove identity, they are significant circumstances indicating guilt. [More like this Headnote](#)

[Shepardize - Narrow by this Headnote \(0\)](#)

Evidence > [Types of Evidence](#) > [Circumstantial Evidence](#)

Criminal Law & Procedure > [Criminal Offenses](#)

HN7 Attempts to conceal incriminating evidence, inconsistent statements, and implausible explanations to the police are probative of wrongful conduct and are also circumstances of guilt. The **Court of Appeals of Texas** has long recognized the significance of evidence indicating a consciousness of guilt: a "consciousness of guilt" is perhaps one of the strongest kinds of evidence of guilt. It is consequently a well accepted principle that any conduct on the part of a person accused of a crime subsequent to its commission, which indicates a "consciousness of guilt" may be received as a circumstance tending to prove that he committed the act with which he is charged. Attempts by a party to suppress or fabricate evidence have been held admissible against a witness. [More like this Headnote](#)

[Shepardize - Narrow by this Headnote \(0\)](#)

Evidence > [Types of Evidence](#) > [Circumstantial Evidence](#)

Evidence > [Inferences & Presumptions](#) > [Inferences](#)

Criminal Law & Procedure > [Criminal Offenses](#)

HN8 The law is well settled that the elements of an offense may be proven by circumstantial evidence and reasonable inferences therefrom. [More like this Headnote](#)

[Shepardize - Narrow by this Headnote \(0\)](#)

Criminal Law & Procedure > [Criminal Offenses](#) > [Homicide, Manslaughter & Murder](#) >

[Murder](#)

HN9 Murder is a "result of conduct" offense because it punishes the intentional killing of

another regardless **of** the specific manner (e.g., shooting, stabbing, suffocating) **of** causing the person's death. [More like this Headnote](#)

Shepardize - Narrow by this Headnote (0)

Criminal Law & Procedure > [Criminal Offenses](#) ▼ > [Homicide, Manslaughter & Murder](#) ▼ >

[Murder](#) ▼

HN10⚡ A charge alleging that a defendant committed murder "by a manner and means unknown" is permissible when a limited list **of** known alternatives does not exist. If the evidence does not establish the precise manner and means, the charge should retain the "unknown" language because what matters is that the jury was convinced, beyond a reasonable doubt, that the defendant was the person who intentionally caused the victim's death, however he did it. [More like this Headnote](#)

Shepardize - Narrow by this Headnote (0)

Evidence > [Admissibility](#) ▼ > [Circumstantial & Direct Evidence](#) ▼

Criminal Law & Procedure > ... > [Standards of Review](#) ▼ > [Substantial Evidence](#) ▼ >

[Sufficiency of Evidence](#) ▼

HN11⚡ The question **of** whether the evidence—both circumstantial and direct—is sufficient to demonstrate the commission **of** a charged offense in a given case is a highly individualized inquiry that requires evaluation **of** the all **of** the evidence in the record. [More like this Headnote](#)

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HN12⚡ As a general rule, a "count" is used to charge a separate offense, and each paragraph within a count is used to allege a separate method **of** committing that offense. [More like this Headnote](#)

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Criminal Law & Procedure > [Appeals](#) ▼ > [Procedural Matters](#) ▼

HN13⚡ The **Court of Appeals of** Texas has authority to modify incorrect judgments when the necessary information is available to do so. [Tex. R. App. P. 43.2\(b\)](#). [More like this Headnote](#)

Counsel: For State: Mr. M. Scott Taliaferro, Assistant District Attorney, Director, Appellate Division; The Honorable [Margaret M. Moore](#) ▼, Travis County District Attorney, Austin, TX.

For Appellant: Ms. [Linda Icenhauer-Ramirez](#) ▼, Attorney at Law, Austin, TX.

Judges: Before Chief Justice [Rose](#) ▼, Justices [Field](#) ▼ and [Bourland](#) ▼.

Opinion by: [Cindy Olson Bourland](#) ▼

Opinion

MEMORANDUM OPINION

Appellant George Delacruz was charged with two counts **of** murder, which in substance were two alternative theories as to how the State alleged he murdered his wife. See [Tex. Penal Code §19.02\(b\) \(1\), \(2\)](#). A jury rendered a general guilty verdict without indicating which theory it relied upon and assessed punishment at life imprisonment. On **appeal**, Delacruz challenges the sufficiency **of** the evidence to support his conviction. For the reasons that follow, we will modify, and affirm as modified, the judgment **of** conviction for Count 1 and reverse and dismiss the judgment **of** conviction for Count 2.

BACKGROUND

Delacruz and Julie Ann Gonzales had a daughter, L.D., and married young. In December 2009, shortly after they married, Julie filed for divorce. On March 26, 2010, Julie went to pick up L.D. from Delacruz's house and was never seen or heard from again.

Because an initial investigation revealed (1) no evidence **[*2]** **of** foul play and (2) messages that had been sent from Julie's cell phone after she went missing indicating that she had simply left Texas for Colorado with another man, law enforcement did not conduct a thorough investigation into her disappearance at the time it was reported. Julie's family, however, insisted that she had not voluntarily abandoned her child and continuously urged law enforcement to resume its investigation.

In May 2010, law enforcement began to investigate Delacruz in connection with Julie's disappearance. Following an extensive investigation, Delacruz was arrested and charged with murdering Julie, although her body was never recovered. Following a two-week trial, a jury found him guilty and assessed punishment at life imprisonment. This **appeal** followed.

STANDARD OF REVIEW

HN1 When reviewing the sufficiency of the evidence to support a conviction, we consider all the evidence in the light most favorable to the verdict to determine whether, based on the evidence and reasonable inferences therefrom, any rational jury could have found the essential elements of the offense beyond a reasonable doubt. *Jackson v. Virginia*, 443 U.S. 307, 318-19, 99 S. Ct. 2781, 61 L. Ed. 2d 560 (1979); *Brooks v. State*, 323 S.W.3d 893, 912 (Tex. Crim. App. 2010).

HN2 The jury is the sole judge of the weight and credibility of the evidence [*3] and may believe all, some, or none of a witness's testimony. *Tex. Code Crim. Proc. art. 38.04*; *Brooks*, 323 S.W.3d at 899. We may not re-evaluate the weight and credibility of the evidence and substitute our judgment for that of the jury. *Isassi v. State*, 330 S.W.3d 633, 638 (Tex. Crim. App. 2010). We defer to the jury's resolution of any conflicting inferences from the evidence and presume that it resolved such conflicts in favor of the judgment. *Jackson*, 443 U.S. at 326; *Whatley v. State*, 445 S.W.3d 159, 165 (Tex. Crim. App. 2014).

HN3 We must determine whether the inferences necessary to support the verdict are reasonable in light of the cumulative force of all of the evidence, including both direct and circumstantial evidence. *Clayton v. State*, 235 S.W.3d 772, 778 (Tex. Crim. App. 2007). "It is not necessary that the evidence directly proves the defendant's guilt; circumstantial evidence is as probative as direct evidence in establishing the guilt of the actor, and circumstantial evidence alone can be sufficient to establish guilt." *Carrizales v. State*, 414 S.W.3d 737, 742 (Tex. Crim. App. 2013) (citing *Hooper v. State*, 214 S.W.3d 9, 13 (Tex. Crim. App. 2007)). Each fact need not point directly and independently to guilt if the cumulative force of all incriminating circumstances is sufficient to support the conviction. *Hooper*, 214 S.W.3d at 13.

HN4 Reversal on evidentiary sufficiency grounds is restricted to "the rare occurrence when a factfinder does not act rationally." *Laster v. State*, 275 S.W.3d 512, 517 (Tex. Crim. App. 2009); see *Thornton v. State*, 425 S.W.3d 289, 303 (Tex. Crim. App. 2014) (reviewing court may not act as a "thirteenth juror"). The appellate scales are weighted in favor of upholding [*4] a trial court's judgment of conviction. *Winfrey v. State*, 323 S.W.3d 875, 879 (Tex. Crim. App. 2010).

DISCUSSION

In his sole issue, Delacruz challenges the sufficiency of the evidence to support his conviction. We must therefore determine whether the evidence was sufficient to support the jury's finding beyond a reasonable doubt that Delacruz (1) intentionally or knowingly caused Julie's death or (2) intended to cause serious bodily injury and committed an act clearly dangerous to human life that caused Julie's death. See *Tex. Penal Code* § 19.02(b)(1), (2). We conclude that the record supports Delacruz's conviction.

A. What the evidence shows

Over the course of two weeks, the jury was presented with the State's evidence, which included testimony from three dozen witnesses and nearly 150 exhibits. Viewing the record in the requisite light, we conclude that the evidence is sufficient to support the verdict. It shows that Julie's life ended the morning of March 26, which was the last time that Delacruz—or anyone—saw her; that Delacruz had a motive, plan, and opportunity to kill her; that he concealed and fabricated evidence; that he provided numerous false and misleading statements to friends, family, and law enforcement regarding their relationship and her disappearance; that he [*5] withheld information from law enforcement that would have been critical to their investigation; and that he admitted that he committed a violent act against Julie in his home that left her bloodied and unconscious.

1. Julie meets Delacruz, has L.D., and Julie and Delacruz marry

Delacruz and Julie met during their last year **of** high school in 2006 and moved into an apartment together after graduation. In August 2007, Julie became pregnant with L.D. She and Delacruz married in May 2009. The three then moved in with Delacruz's mother, Victoria Delacruz, and his three younger sisters in Victoria's home in south Austin.

2. Julie was responsible and had many close relationships

Julie had several friends and family members with whom she was close and whom she would see on a regular basis. Every witness who testified regarding Julie's character indicated that she was kind, loving, and responsible. Sandra Soto, Julie's mother, testified that her daughter was "super sweet, very loving" and had a "very kind, beautiful heart." She described her as a "very driven" student and said that she had graduated early and received multiple scholarships to continue her education.

Julie's sister, Samantha Petri, **[*6]** testified that she and Julie "hung out every other weekend," would get dinner and go to movies together during the week, and "would constantly talk to each other during the week." She said that Julie "was very involved in [Petri's] school life" and that Julie helped her with her academics. They were "really bonded" and confided in each other about things going on in their lives. Julie's cousin, Alyssa Soto, testified that she and Julie "had a very good relationship" and that Julie "was like a big sister to" her and all **of** their cousins. She said they "were always very close, always together." Natasha Navarro and Amanda Hays both testified that Julie was their "best friend." Navarro described Julie as a "go-getter" who "went out **of** her way for others." She testified that Julie "didn't have a mean bone in her body." Hays testified that she, Julie, and Navarro "did everything together" and had remained close friends since sixth grade.

All **of** Delacruz's family members who testified also spoke highly **of** Julie. Victoria, Delacruz's mother, testified that she and Julie always remained "close" even when Julie and Delacruz experienced difficulties in their relationship. She confirmed that Julie **[*7]** was "mature," was "reliable about getting a job and going to work," and valued schooling and education. Delacruz's sister, Liliana Delacruz, similarly testified that Julie "was a good . . . kind, smart" person who always emphasized to her the importance **of** education. Delacruz's cousin, Ariel Nunley, testified that Julie was a "nice, loving person, very friendly, very good to get along with." She described Julie as "mature" and "responsible."

3. Julie was a devoted mother

Similarly, every witness who was asked about Julie's relationship with L.D. commented on the strength **of** Julie's commitment to L.D. Julie's mother, Sandra Soto, described Julie as a "very responsible" mother to whom no one was more important than L.D. Julie's sister, Samantha Petri, testified that Julie "would constantly spend time with" L.D. and "was just constantly happy with her." Julie had told Petri that having a child "was one **of** the best things that happened to her." Julie's aunt, Dora Soto, testified that L.D. was Julie's "main focus at all times" and was "number one in her book." Alyssa testified that Julie "loved" and "adored" L.D. and described Julie as "one **of** the best mothers I've ever seen." Another **of** **[*8]** Julie's cousins, Michael Soto, testified that Julie "was all about L.D." He said that Julie was "excited to have her first kid" and that "she wanted to do it right, so she really put forth an effort into it." Hays similarly testified that L.D. was "everything" to Julie and that "L.D. came first to her." Delacruz's mother, Victoria, described Julie as "an excellent mom" who "wanted to make sure that L.D. wouldn't be lacking anything." Delacruz's cousin, Nunley, also confirmed that L.D. was "a main focus" **of** Julie's life and that nothing was more important to Julie than L.D.

The testimony also demonstrated that Julie was especially attentive to L.D.'s health-care needs. L.D. required asthma medication several times daily, which Julie refilled regularly. Julie's Aunt Dora testified that Julie "always made sure that [L.D.] went to the doctor on time" and "always made sure she had her medicine, no matter what."

In order to provide adequate care for L.D., Julie obtained her pharmacy technician's license and

maintained full-time employment at a Walgreen's drug store. Sandra testified that Julie had pursued a career that would enable her to properly care for L.D. Nunley testified that Julie **[*9]** wanted to become a pharmacy tech "to do something better for her daughter."

4. Julie's employers spoke highly of her

Julie's supervisor at Walgreen's, Priscilla Verana, testified that Julie was always punctual and reliable. She described Julie as her "number one pharmacy tech" and stated that she "depended on [Julie] the most." She said Julie was "[n]ever late. Never called in. She always showed up." Julie's manager, Mylinda Burrow, similarly testified that Julie was exceptionally mature and an exemplary employee who was promoted quickly. She described Julie as "very happy, a happy-go-lucky person" who "got along with everyone."

Burrow and Verana also testified as to Julie's devotion to L.D. Burrow testified that she saw Julie as a "loving mother doting on her child." Verana confirmed that L.D. was "definitely" the focus **of** Julie's life, that Julie "was always talking about L.D.," and that "[h]er whole work schedule revolved around her[.]"

5. Delacruz's gaming habit and poor treatment of Julie and L.D. causes marital strife

Soon after Julie and Delacruz married, she began to complain to friends and family **of** discord in their relationship. The acrimony stemmed primarily from the fact that Delacruz spent **[*10]** the majority **of** his time playing video games in lieu **of** maintaining employment, attending to domestic duties, or caring for L.D.

Several witnesses, including Julie's and Delacruz's family members, testified as to Delacruz's gaming habit and the problems it caused in the marriage. Julie's primary complaint concerned Delacruz's neglect **of** L.D. due to his gaming habit. Julie's Aunt Dora testified that Delacruz "was always playing video games" and "wasn't involved with L.D. at all." Delacruz's sister, Liliana, testified that Julie would "get really angry and upset that George was playing" video games; that Julie would complain to her that when she would leave L.D. with Delacruz, he would leave her "dirty, unfed, not changed"; and that Julie "was very concerned about that." Julie's sister, Petri, also testified that Julie complained that Delacruz would "constantly play video games all the day, and that was one **of** the reasons why he wasn't taking care **of** L.D." She said that Julie would regularly tell her "that she was worried about leaving L.D. with" Delacruz, especially because she was concerned that he would not give L.D. her asthma medication.

The jury also heard testimony that Delacruz **[*11]** was abusive and controlling **of** Julie. Michael Soto and Dora Soto both testified that Delacruz had been physically and verbally abusive **of** her. Dora testified to having seen bruises on Julie's arms but said that Julie "would just ignore it or dismiss it." Petri described an occasion on which Delacruz slapped Julie, after which "she was shaking because she was really scared."

Both Michael and Julie's supervisor, Verana, testified that Delacruz was controlling toward Julie. Julie's friend, Hays, testified that Julie was "scared" and felt "controlled" by Delacruz. Julie expressed concern to Hays for her own safety. Julie's friend, Navarro, testified that Delacruz was disrespectful, immature, and "a good faker." She said that Delacruz "talked down to" Julie and that Julie was "having to work twice as hard" because Delacruz "wasn't growing up." Petri also testified that the marriage caused Julie a great deal **of** stress.

Dora testified that Julie "wouldn't like to go home because **of** the arguments they would get into" and that Julie began staying with her, Sandra, or Julie's grandparents because **of** those fights. She said that Julie expressed unhappiness and that she "did not want to be married **[*12]** anymore."

6. Julie rekindles a past relationship

In October 2009, Julie ran into a man she had dated several years previously, Aaron Breaux. Julie originally met Breaux when he had worked at a store run by Julie's family. Julie's family members testified that they had discouraged the relationship at the time because Breaux was several years older than her, and the two had subsequently lost touch. Sandra described him as a "family friend" and a "great guy." Julie's friend, Hays, testified that Julie was "very excited" and "overjoyed" about seeing him again.

Breaux testified that he and Julie began dating again in mid-November 2009 and that Julie began occasionally staying at his apartment "two or three months into it." Sandra described Breaux and Julie as having a strong connection and being "like-minded." Julie's sister, Samantha Petri, testified that Julie loved Breaux, whom Petri described as "very honest" and a "very caring person" who loved Julie and L.D. Michael Soto also testified that Breaux and L.D. also had a positive relationship and that "L.D. loved him." He said that Breaux "would take her out fishing and stuff like that." Breaux bought L.D. a toddler bed, which he kept at [*13] his apartment.

The testimony also indicated that Julie and her family feared Delacruz's reaction if he found out about her involvement with Breaux. Dora testified that Julie was "very happy" to have Breaux back in her life, but Dora was concerned that Delacruz would find out "[a]nd get upset and just do something crazy." Sandra similarly testified that she "wasn't sure how Delacruz would react when he would find out" about Julie and Breaux, which "scared [her]." Breaux testified that Julie would refer to him as her "friend" rather than by his name when with L.D. because Julie feared that L.D. would use Breaux's name in front of Delacruz and Delacruz would learn of their relationship. Breaux said that the avoidance of the use of his name continued until about mid-February 2010, around which time he heard L.D. saying his name.

7. When Julie and L.D. moved out of Victoria's house, Delacruz began obsessive behavior toward Julie

In November 2009, Julie and L.D. moved out of Delacruz's mother's house and into Julie's grandparents' house in Dripping Springs. Several witnesses testified that Delacruz began engaging in obsessive behavior toward Julie. Sandra testified that Delacruz was "unstable" and [*14] "hurting really bad from the separation." He would remark that "[i]f she ever left me, I would kill myself." She confirmed that Delacruz told her that "he felt like his world was ending when Julie Ann left him." She tried to offer him comfort because she was concerned for his well-being. She said that although she was sympathetic to him, "he was too focused on Julie. It's like everything was about Julie" She testified that Delacruz "wouldn't leave Julie alone, and he would just do different things to try to get her attention," such as "sending her weird text messages" and going over to Julie's house and work "unexpected."

Julie's supervisors testified that Delacruz harassed Julie at work. Verana testified that Delacruz "would call [the store] a lot and want to know where [Julie] was." Burrow testified that she received multiple complaints on numerous different occasions that Delacruz was "lingering around" the store, "watching Julie work." She said that "[h]e was calling numerous times while she was trying to work, bothering her," and affecting her productivity. She described him as "trying to control every little situation. So [Burrow] had to kick him out of the store."

Michael Soto [*15] testified that Delacruz would routinely ask him about Julie, specifically about whether she was seeing anyone. He said, "[Y]ou could tell that he wanted to know something about what she was up to." He testified that Julie usually took someone with her to pick up L.D. from Delacruz's house because she didn't feel comfortable going alone. Dora similarly testified that when Julie would pick up L.D., Delacruz would "try to do something to get her to stay or get into the house," so her family advised her to take someone with her or pick L.D. up in a public place.

8. Julie files for divorce, and Delacruz becomes more aggressive and unstable

Julie filed for divorce on December 16, 2009. Delacruz refused to accept service **of** the divorce petition despite Julie's continual efforts. Several witnesses testified that he adamantly opposed the divorce. Dora testified that Delacruz was "pissed off at" Julie for seeking a divorce. Michael testified that Delacruz "didn't want to go through with it. He didn't want it to happen." Petri testified that Julie had told her that Delacruz refused to agree to the divorce because "he doesn't want to let go. He's obsessed with me." She said that Julie had described Delacruz **[*16]** as "losing it, that he would say off-the-wall things, that he was going to hurt himself." Verana testified that Julie "wanted out, and he didn't," which "was a problem."

Both Dora and Sandra testified regarding Delacruz's efforts to garner Julie's attention and sympathy, including feigning amnesia after allegedly sustaining a head injury, which he later admitted was false. According to their testimony, Delacruz instructed a doctor to call Julie to come to the hospital and tend to him, but he pretended not to know Julie's family or L.D., a ruse he perpetuated for weeks.

Michael described one occasion in which he and a friend accompanied Julie to collect her personal belongings from Delacruz's house because they believed that "he wanted to do something to her." She insisted on leaving without all **of** her things because Delacruz was "pressuring her" to her go inside and kept "trying to close the door with her in the room."

On January 10, 2010, Delacruz left a suicide note in L.D.'s diaper bag for Julie to find, which Julie reported to law enforcement. Concerned for L.D.'s welfare, Julie sought an order **of** supervised visitation requiring that a member **of** Delacruz's family be present during **[*17]** his periods **of** possession. **1↓** Thereafter, Victoria arranged her work schedule so that her days off **of** work coincided with Delacruz's periods **of** possession.

The record indicates that Julie strictly enforced the possession order and always promptly picked up L.D. at the end **of** Delacruz's visitation. Delacruz's sister, Liliana, described Julie as "possessive" **of** L.D. She recalled that, a week or two before Julie disappeared, Julie texted Liliana that L.D. needed to be ready to go when Julie picked her up or "she was going to threaten George to take away custody **of** L.D." Dora testified that, a few days before she disappeared, Julie was upset because L.D. was hungry and had a dirty diaper when she picked her up from Delacruz's house. Petri testified that, shortly before Julie disappeared, Julie expressed concern for L.D.'s health while L.D. was staying with Delacruz.

9. Delacruz's online activity reflected devastation, rage, and a plan

Delacruz was active on MySpace and routinely posted messages about his life. On January 12, two days after drafting his suicide note, he posted a message entitled "Mistakes" shortly after 1:10 a.m. expressing regret about Julie but a renewed devotion to L.D.:

I **[*18]** think in my life I have really done a lot **of** mistakes. Including the ones I have recently made also finding love was a big mistake but that mistake gave me [L.D.] I love her so much I'm happy I had that mistake I thank god for that mistake and thank god to give me 1 more try I won't fail on [L.D.] baby I'm going to give everything to you you're my priority baby. I'm going to show everybody what I can do I'm going to be successful you'll see. Really am happy for that one mistake it turned out to be an amazing gift.

On January 22, he posted that he was "cleaning some old memories away."

The tone **of** his messages soon became more belligerent. Shortly after midnight on February 23, he posted, "fucking hated wen people lie fucc u b*tch." Around midnight the next day, Delacruz sent Julie the following email:

I just wanted to tell u thanks for making my life misarable I hate that u have to still lie about shit but I don't care anymore do whatever but between u and me we r nothing no more I was starting to get along with u but I can't sorry but not even friends I will still talk to u only cause **of** [L.D.] and nothing else so fuck off and leave me alone now.

Julie emailed him on February 26, indicating **[*19]** that she did not know what he believed she was lying about and pleading with him to make L.D. a priority. She remarked that he had been making an effort with L.D. a few weeks earlier but that "now you don't even care at all." The next day, he

responded,

Sorry for working and I do care about [L.D.] I miss her and ur the ugly person not me plus I don't trust u period and u know wat u did wrong sorry but it's the truth I hate that u always blame me about [L.D.] everything I do u have to trow it in my face but it's cool I don't care cause I know wat I have to do and don't trust me anymore cause I don't want u too.

That same day, he posted a message entitled "Too Hard To Forget":

When everything settles down and my fun stops all the shit returns it just don't go away. It's just hard to forget about it hate it cause I can't move on I tried and tried but it's not doing anything. I just miss the old times. I'm sorry so sorry.

Around midnight on March 7, fewer than three weeks before Julie disappeared, Delacruz posted a message that read, "the way things r going its leaning toward my original plan." The next day, he posted, "wat i know im not a good person a good friend or a good father fuck it **[*20]** i hate this shit" and described his "[m]ood" as "failure." He also sent Julie another email that day: "You r right about everything about me thank you for telling me wat I am if it wasn't for u I wouldnt seen it sorry that I can't help and u have to finish stuff I don't do it u wanted it so be it finish wat u started." On March 18, he posted, "hate wen people lie i don't understand why they cant say the truth" and described his "[m]ood" as "aggravated."

10. Julie makes plans for the future

Meanwhile, Julie had begun making plans for her and L.D.'s future. She and Breaux had discussed marriage and having children together. The two had found an apartment about which Julie had expressed excitement to various friends and family members.

Several witnesses testified as to the strength **of** Julie and Breaux's relationship and their commitment to each other. Breaux's roommate, Joshua Dean, testified to seeing papers at Breaux's apartment in which he and Julie had itemized information such as their incomes, expenditures, and L.D.'s schedule. He said that Julie and Breaux "both seemed real excited about getting together, especially after what she had just been through. So they were looking to moving forward." **[*21]** Sandra also testified that they had made plans for the future, including moving in together. Petri similarly testified that Julie and Breaux would regularly discuss plans such as getting an apartment that would have enough space for L.D. to have "a bunch **of** toys and a dollhouse."

Julie had also purchased a gold Impala shortly before she disappeared **of** which several witnesses testified she was proud. Dora testified that Julie "was so excited because she . . . got her own car on her own." Alyssa testified that Julie was "so excited" about her new car and had saved her money to buy it. Frances Baggett, the manager **of** the dealership where Julie bought her car, testified that Julie was "excited about starting her new life, very excited about getting into this new little vehicle and was, again, set on a new course, from what she was telling me, in her life."

Julie's manager, Burrow, testified that, shortly before she disappeared, Julie had told her that she "felt like she was getting her life together." Dora testified that Julie "had the support **of** [her] whole family" and "was doing well." Michael testified that Julie had a new job she loved and a new car and said that "it was like she was **[*22]** starting her life with her daughter."

Several witnesses testified that the only stress in Julie's life was Delacruz. Petri confirmed that the marriage was "causing [Julie] to be under a great deal **of** stress because **of**" Delacruz. Sandra testified that Julie had no animosity with any friends, co-workers, or family "other than [Delacruz]." Michael similarly testified that Julie had no other problems in her life other than "getting away from [Delacruz]."

11. Julie feared Delacruz

Julie expressed fear about Delacruz after she left him and suspected he might harm her. Sandra testified that, after Julie left Delacruz, Julie told her that "she felt [Delacruz] was up to something." Petri testified that the last time she spoke with Julie, Julie kept telling her "that she had a bad feeling, and she kept saying that over and over."

Burrow testified that, after Julie initiated the divorce, she told Burrow that she "fear[ed] for [her] life." Julie said that Delacruz had told her that if "he cannot have her or L.D., nobody will." Burrow further testified that Delacruz would follow Julie while she was driving. She described one such occasion that occurred about a week or two before Julie went missing when Julie **[*23]** called Burrow and said, "He's right behind me. I don't know what to do. I don't want to get out **of** my car. I'm just driving around." Julie told Burrow that "if anything ever happened to her it was him."

12. The hours preceding Julie's disappearance

On Thursday, March 25, the day before she went missing, Julie was scheduled to pick up L.D. from Delacruz's house pursuant to the possession order, but Delacruz had called her to request that L.D. stay an extra night with him. Delacruz's mother, Victoria, had been off **of** work Thursday, but was scheduled to work the following day, March 26. Julie's cousin, Michael Soto, had planned to accompany Julie to pick up L.D. on Thursday, but was unable to do so on Friday due to his work schedule. On Friday, Delacruz's sisters were at school all day. Julie agreed to the extension, despite her mother's and her own misgivings, because she was happy that Delacruz was making an effort to spend more time with L.D.

Julie's cousin, Michael, testified that Julie picked him up from work around 5:00 p.m. on Thursday, March 25, and that "[e]verything was normal. We were just talking, laughing, joking around, having a good time." She told him that she was excited about his first **[*24]** son being born and had planned to get him a gift that weekend for his upcoming baby shower, which she planned to attend. They also made plans to get together the next day, March 26. Julie told him she would pick him up from work around 5:00 p.m. again, and they "were going to hang out after that."

The evening **of** Thursday, March 25, Julie stayed with Breaux at his apartment, a short distance from Delacruz's house. The two went to dinner with Julie's friend, Hays. Hays testified that she had not yet met Breaux, and Julie had wanted her "opinion and approval" **of** him. Hays said that, at dinner, Julie and Breaux discussed looking for apartments together, marriage, and having children. Julie's supervisor, Burrow, testified that Julie had mentioned the dinner to her and that Julie was excited about it and said she would tell Burrow about it at work on Monday. Breaux testified that he and Julie watched a movie at his apartment that night.

The following morning, Friday, March 26, Breaux left for work at approximately 6:00 a.m. Julie had asked him to take the day off **of** work since she had the day off, but he was unable to. Breaux's roommate testified that he heard Julie getting ready around 8:30 **[*25]** a.m. and that she was gone by the time he got up at 9:00 a.m.

Julie had left a three-page, handwritten love letter on Breaux's pillow that morning. In it, she described her recent time with him as "the happiest" and said that their "happiest days haven't come yet . . . like the day we get married and have our little boy (yes boy I want a boy) and many more." She explained that she was "not freaked out anymore" to get remarried and was not "afraid **of** either one **of** us changing." She told him he made her "feel special and loved." She expressed enthusiasm about moving in together in August into a certain apartment complex they had visited and said she "[couldn't] wait. Waking up together every morning. Making dinner together or for each other, having chocolate chip or blueberry pancakes with powdered sugar even hopefully having chocolate fondue again."

Sandra testified that Delacruz generally kept L.D. Tuesday through Thursday and that Julie would pick her up from his house after work on Thursday. Because Julie was afraid **of** Delacruz, Sandra would call her to ensure she was safe after she picked L.D. up. Sandra testified that, on this occasion, Julie told her that she had agreed to let Delacruz **[*26]** keep L.D. until Friday morning because he had told Julie that "he really wanted to spend time with L.D.," which Julie had encouraged. Sandra said she was dubious and indicated to Julie that it "just doesn't sound right. Something is going on." She testified that she and Julie had "let [their] guard down" and that Julie had gone alone to pick up L.D. Friday morning.

13. No one is able to see or speak to Julie

On Friday, March 26, Julie's friends and family knew something was amiss when no one was able to reach her directly. Dora testified that Julie had planned to visit her that day because Julie had the day off. Julie had indicated that she "had some business at the courthouse" and then was going to stop by Dora's house for lunch or go see her at work afterward. When Dora did not hear from her, she was "immediately concerned because that was not her norm." She continued to try to reach Julie all day without success.

Several **of** Julie's other friends and family members tried contacting her beginning the morning **of** March 26 and throughout the following days. Julie never answered or returned their calls, which either went to voicemail after ringing, were diverted to voicemail after one or **[*27]** two rings, or went directly to voicemail as though the phone were turned off. Concerned, the family gathered at Dora's house the following evening, March 27. They determined that the last any **of** them had seen Julie or heard her voice was the evening **of** March 25 and that she had been at Breaux's until Friday morning when she left to pick up L.D. from Delacruz's house.

Julie's cousin, Michael Soto, testified that "everybody was already freaking out trying to figure out where she was" because "no one had heard from her" and it "wasn't like Julie just not to talk to anybody." He stated that he and his mother went by Delacruz's house that evening because "that was the last place we knew she went that anybody heard from her" and that they didn't see any sign **of** her. He "knew something was wrong" because they "talked every day. . . . It could have been 3:00 in the morning" and she would answer "[n]o matter what." Petri testified that Julie did not contact her at all on March 26, which was "unusual." That caused her concern, especially when she discovered that Julie had not communicated with anyone in the family because "every day she would constantly talk to someone in the family." She said that **[*28]** everyone was "in shock about everything that was happening" and was "consoling each other" while still trying to reach Julie.

Several other witnesses provided similar testimony. Sandra testified that Julie "was always in contact" with friends and family and wasn't "the type to run away or take off without telling somebody something." She indicated that Julie had never disappeared before. Dora confirmed that "Julie was always on the grid, so to speak." Julie's best friends, Hays and Navarro, both testified that they spoke to Julie regularly but that Julie didn't answer or return their repeated calls on March 26 and March 27, which eventually began going directly to voicemail. They both testified that such behavior was wholly out **of** character for Julie and alerted them that something was wrong. Julie's cousin, Alyssa Soto, and Delacruz's cousin, Nunley, also testified that they had tried to call Julie repeatedly without success.

That Monday, March 29, Julie was scheduled to work and did not show up. Julie's manager, Burrow, testified that she called Julie but that her call went directly to voicemail. She said that not showing up for work or answering her phone calls was "out **of** character" **[*29]** for Julie. Her supervisor, Verana, similarly testified that she "was worried about [Julie] because that was unlike her."

14. Uncharacteristic texts sent from Julie's phone and posts made to Julie's MySpace account that weekend

Although no one had seen or been able to speak to Julie since the night **of** March 25, friends and family received texts from her phone beginning the morning **of** March 26 indicating that she was leaving Breaux and had left Austin for Colorado to stay with another man no one had heard **of**.

Breaux testified that he called Julie repeatedly beginning at approximately 9:00 a.m. on Friday, March 26 but was unable to reach her. Around 2:00 p.m., he received a text from her phone "along the lines **of**, I can't do this anymore . . . like she was breaking up," which "shocked" him, particularly in light **of** the love letter she had left him that morning. He testified that he "had a gut feeling that something was wrong." He "felt like somebody else had her phone," so he sent her a text asking her to tell him his middle name—which he said was "something only she would know"—to which he received a response saying, "I don't feel like playing games." He tried calling her phone several **[*30]** more times, but his calls were unanswered.

Julie's sister, Petri, similarly testified that Julie never answered her calls that weekend and that she would instead receive text messages from Julie's phone. She described one text as indicating "that the family should stop worrying about her and that we should leave her alone."

Julie's cousin, Alyssa Soto, received texts from Julie's phone on the afternoon **of** March 26 saying "she wanted to be away, that she was very sad." She testified that the messages she received were "just rambling . . . it wasn't Julie. It wasn't her personality. If there was a problem, we would know." She texted Julie to come home and see her. She said they had never had an exchange like that. She described the messages as "completely out **of** character," noting that they "weren't even spelled correctly," and that she "just knew that it wasn't" Julie.

Julie's friend, Hays, also testified that she received a text from Julie's phone on March 26 saying that she had left Texas but planned to return. She indicated that she had met someone named "James," who she had worked with and who was a web designer building a house in Colorado. Hays confirmed that Julie had never previously **[*31]** mentioned such a person and testified that the texts "did not sound like her."

Julie's friend, Navarro, testified that, immediately after she had tried calling Julie on March 27, she received several texts from Julie's phone. The texts indicated that she had "met a guy" who lived in Colorado and that she was "leaving with him for the weekend" and told Navarro not to tell anyone. Another text stated, "I didn't love [BreauX]. I thought I did," which Navarro testified was "something Julie would never say. That sounds like something [Delacruz] would say." Julie never answered Navarro's repeated calls and instead kept texting her about not wanting to talk, which Navarro testified Julie had never done. Navarro further testified that the text exchange "isn't Julie at all . . . because Julie would never leave [L.D.]" Sandra testified that "she knew that wasn't Julie. The way that that person was sending out those messages, that's not Julie." Michael confirmed that Julie had never expressed an interest in running away from everything.

Over the course **of** March 26 and March 27, postings were made on Julie's MySpace account that similarly indicated that she had left Austin. At 12:29 p.m. on March **[*32]** 26, a message was posted to her account that read, "going away hate all this bs want to run away[.]" At 7:06 p.m., a message was posted entitled, "im not the same":

Everything is so hard I hate hurting people I love I'm with the one I loved and I'm with the other one that i love. I hate how things turned out I just wish I never met them. I'm here miles and miles away from everybody hopefully I will find myself in these few days. He better show me a good time here and make me forget about everything in Austin. I don't want to go back and tell him I screwed up I'm so afraid but I'll see what happens.

On March 27 at 1:57 a.m., another message was posted to her account that read, "really happy for leaving austin I love this place and i miss my ay bay bay." She indicated that her "[m]ood" was "amused." A message posted at 11:01 a.m. read, "cant decide what to eat for breakfast" and indicated that her "[m]ood" was "hungry." At 12:38 p.m., a post read, "im really hurt right now I don't know if this heart can take it anymore" and indicated that her "[m]ood" was "heart broken" with a smiley-face emoji. And at 9:40 p.m., a final post read, "Just wanted to say im ok and that people shouldnt worry about me and to **[*33]** stop bothering me i want to enjoy my time." That post indicated that her "mood" was "adventurous." All **of** the messages indicated that they were posted "from Mobile."

Multiple witnesses testified that the posts caused immediate concern because they, too, were out **of** character for Julie. Petri confirmed that the postings were surprising and concerning to her because they did not "sound like the Julie" she had known all her life. She apprised her mother **of** the posts, which caused her mother to become "very concerned." She said that Julie had never talked about "running away from everything" and "leaving everything behind."

Hays testified that, after seeing the posts, she knew "something was really wrong and I needed to talk to her" because Julie had been so happy the night before, and it was unlike her to swing from happy to sad. Navarro testified that Julie "wasn't really into social media" and was rarely on MySpace. She said Julie was not one to post messages to social media to garner attention. She testified that she did not believe that Julie would "post this whole new" self on MySpace because social media "wasn't something Julie does." Navarro further testified that Julie was very **[*34]** in love with BreauX. A few days prior to her disappearance, Julie had described to Navarro in detail a two-bedroom apartment in Oak Hill that she and BreauX were going to get, which Julie had described as "so exciting . . . for us and L.D." Thus, Navarro did not understand the texts she received on March 26 about leaving for Colorado with a man Julie had never mentioned, especially without L.D.

15. Julie's family gathers at Dora's house Saturday night and files a missing-persons report

On the evening **of** March 27, Julie's friends and family gathered at Dora's house and confirmed that no one had been able to reach her. They also confirmed that none **of** Julie's personal belongings had been moved or removed from Breaux's apartment or her grandparents' house.

Dora called the police to make a missing-persons report. Officer Jason Day **of** the Austin Police Department (APD) responded to the call. Officer Day testified that the Sotos reported that several people had been trying to get in contact with Julie but that none had been "able to get in any direct contact with her." They explained that postings had been made to Julie's social-media accounts, but that the postings were out **of** character for **[*35]** her and "didn't appear to be in her tone or her voice." Dora informed him that the last she knew **of** Julie's whereabouts was that she was supposed to pick up L.D. from Delacruz's house the previous day and that no one had seen or spoken to her since then. She told Officer Day that this was "not her normal behavior" and expressed concern that Delacruz may have harmed Julie.

Day searched Delacruz's name in APD's database, which revealed his suicide attempt but no prior criminal activity. Day testified that the postings indicated that Julie "might have left voluntarily," so he decided not to contact Delacruz and terminated his investigation. He testified that if he had received other information that indicated that Julie was in immediate danger, he might have forwarded the information to a detective.

16. Michael confronts Delacruz at Delacruz's house Saturday night

Several witnesses testified that, later that night Michael Soto went to confront Delacruz at his house. Michael testified, "I was honestly there to take his life because I knew he did something." When he arrived, Delacruz was in the backyard with some **of** his friends and cousins. He said "everyone stood up" when he entered the backyard, **[*36]** but Delacruz was "hesitant about approaching" him. He said Delacruz "wouldn't come out **of** the dark" toward the security light near where Michael was standing. Michael testified that, although Delacruz "was in the shadows," Michael was nevertheless able to observe scratches "on both sides **of** the bridge **of** his nose and kind **of** near his eyes." Michael said they only had a "quick conversation" and then he left.

17. Delacruz's 911 call Saturday night

At around 9:00 p.m. that night, Delacruz and Victoria called 911 to report that Julie had not yet picked up L.D. Delacruz indicated to the 911 call taker that he wanted to ensure that he would not be found in violation **of** the custody order. He stated that Julie had come to his house Friday morning, asked him to keep L.D. for the weekend, and indicated to him that "she would rather the child be with him instead **of** leaving the child with someone else." He said that Julie had posted messages to MySpace on Friday and Saturday stating that she was leaving Austin and running away.

18. Julie's car is found at a Walgreen's near Delacruz's house Sunday morning

The following morning, Sunday, March 28, Dora spotted Julie's car at a Walgreen's less than half **[*37]** a mile from Delacruz's house, which was not the Walgreen's where she worked. She searched the store for Julie and showed the cashier a picture **of** her, but was unable to find her. She first notified her family that she had found Julie's car and then called the police. Detective James Scott **of** the APD missing-persons unit responded to the call. He testified that he did not search the

car at that time because he believed there was insufficient evidence to justify a search.

The next day, Monday, March 29, Dora contacted the car dealership, who sent an employee to unlock the car. She also contacted the police to supervise. In the back seat was L.D.'s asthma medication, which L.D. took several times daily and which Julie refilled frequently. The medication paperwork indicated that it had been picked up on March 22, three days before Julie was last seen by friends and family on March 25.

The Walgreen's cashier who had been working the night that Julie's car was dropped off testified that sometime between 10:00 p.m. and 1:30 a.m., a woman came into the store, indicated to him that she was having car trouble, and asked if she could leave her car in the parking lot overnight until she could have [*38] someone look at it, to which he agreed. However, he saw her only briefly and was unable to identify the woman from a series of photographs the police collected from store surveillance during that period. Julie's car was eventually towed back to the dealership. The dealership manager, Baggett, testified that the car was fully operational when it arrived at the dealership.

19. Law enforcement's first interview with Delacruz Sunday morning

On Sunday, March 28, after responding to Dora's report about finding Julie's car, Officer John Brooks and two other APD officers went to Delacruz's house to interview him as the last person who had seen Julie. Officer Brooks testified that Delacruz informed him that he had last seen Julie around 10:30 or 11:00 a.m. on Friday, March 26. He told Brooks that Julie had asked him to keep L.D. for the weekend "because she had some things to take care of and wouldn't tell him what those things were." He reported that Julie "was acting strange."

The officers checked the house to confirm that Julie was not there, including two structures in the backyard—a shed and a playhouse. Brooks testified that the shed "had a large plank cut out in the middle of it. It was [*39] freshly cut. There was sawdust. We lifted that and looked underneath, and there was a trench dug in to the dirt underneath and the shed that looked recently dug." He testified that the "[f]loor almost gave way on" one of the officers when he walked in. The trench was approximately five feet wide, five feet long, and two feet deep. Brooks testified that "[i]t just looked very out of place. . . . I couldn't come up with a logical reason why that would be there." Delacruz told them that "someone else dug it for plumbing when they were going to turn it into an apartment."

Officer Brooks also observed fingernail scratches on the side of Delacruz's nose. Brooks testified that he did not inquire about the scratches because Brooks had attributed them to L.D. Delacruz's sister, Liliana, also testified that she observed the scratches when Delacruz picked her up from school Friday afternoon. Sandra testified that she noticed them when she picked up L.D. from Delacruz's house on Sunday. She said that Delacruz had informed her that he had received them while "wrestling" with L.D., but she believed they were too deep to have been inflicted by a toddler. That testimony was consistent with Michael's testimony [*40] that the scratches were visible even in the dark on Saturday night.

20. Delacruz's subsequent conduct

Officer Brooks testified that, after he questioned Delacruz, he received two phone calls from Sandra later that afternoon reporting that Delacruz had called her twice that day to see if police were investigating him. The next day, Monday, March 29, Delacruz signed the waiver of service for Julie's divorce petition after months of refusing to do so. About a week later, on April 6, Delacruz began a new job doing night security after months of unemployment.

Delacruz also began posting messages to MySpace regarding Julie's disappearance. On March 28, the day Brooks had questioned him, he posted "thing just gets more and more weird I hope everything turns out" and "another day and nothing yet but I think we r making progress[.]" Over the course of the next several weeks, he posted messages about Julie's disappearance. At 3:13 a.m. on April 13, he posted a message entitled "Life":

 this past few weeks I been thinking a lot and found out that people are not perfect and

that everyone has problems. Right now im just waiting for something from my ex i hope everything turns out ok. knowing things [*41] has gotten bad 1 thing came out ok and that is that my baby is with me and she is ok and if my ex doesnt come back its all good ill be the best dad for my baby and ill show her all the love she deserves. Just mad that i cant believe a mom will do that abanded a child like that but all well no 1 is perfect i think. Well i hope everything for the best and that god does things for a reason.

Later that day, he posted, "cant think today i want her to come back for L.D. . . i hope she shows up soon cause i hate this sh*t but we will see what happens."

21. Delacruz's two subsequent interviews with law enforcement

Detective Scott testified that he interviewed Delacruz at the police station on April 6 and again on April 28. During his interviews, Delacruz made numerous false and misleading statements and failed to disclose several facts that Detective Scott testified would have been "red flags" that would have raised suspicion regarding Delacruz's involvement in Julie's disappearance.

a. April 6 interview

Delacruz told Detective Scott that Julie was supposed to pick up L.D. Thursday night but that he had requested to keep her one more night. Julie agreed and was going to pick L.D. up Friday morning. [*42] He said Julie arrived at his house around 10:30 or 11:00 a.m. on Friday. He said that she came "in on a very weird-looking way" and that his "first instinct was probably she was on drugs" He described her as "thinking a lot or she wasn't focused."

Delacruz said that she asked him to keep L.D. "for at least the weekend" because she had "stuff to do." He said that she told him, "I just want you to have her because you do that and it's better off with you than with someone else." She refused to specify whether it would be Saturday or Sunday but said she would let him know. He said he was concerned she was trying to trick him into keeping L.D. so she could contact the police about him keeping her during her period **of** possession.

He said that normally when Julie picked up L.D., Julie would be really excited to see her, but that day, "they played like for a little bit and then, 'Okay, well mommy gots to go to work,'" and then she left. He said that he didn't see whether anyone was waiting for her in the car and that that was the last contact he had with her. He told Detective Scott "supposedly she went missing . . . Saturday. That's when I actually started texting and all that." He [*43] said that Sandra called Victoria Saturday and told her Julie was missing, which was the first he knew **of** her disappearance. He said he "thought everything was okay because Friday everything went good . . . that's when Saturday I started uh, talking to my neighbor, see what they saw." However, he also said that when he and L.D. were leaving his house Friday morning, his neighbor, Jesse Corpus, Jr., said he had just seen a man walk up to Delacruz's house and then leave in Julie's car. Corpus told him, "Well I thought that was you in the car," which Delacruz denied.

Detective Scott asked Delacruz if he had killed Julie, which Delacruz denied. Delacruz pointed to the messages posted to her MySpace account after she went missing and speculated that she had simply run away "just to get away from her problems." He then commented on her "weird friends" and stated that "maybe someone like stole her or made her think something and ran off with her." He then speculated that Julie's family was involved in her disappearance. He suggested that "the family knows something that they don't want to give up." He said that Julie's relationship with Sandra was volatile and suggested that Sandra may have [*44] misled Detective Scott about how close she and Julie were. Delacruz indicated that he "had to protect her" from Sandra. He indicated that Sandra likes "drama" and that she and her family had been harassing Delacruz. Delacruz then complained that Julie's family was driving around his neighborhood "constantly . . . and they just like drive slow and just look at us" and asked if he could file a report on them.

Detective Scott asked Delacruz about Hays and Navarro, and Delacruz said that Julie was friends with

them but that they had "problems." He described discord in their friendships. He said that he had a "suspicion [Navarro] knows something that she doesn't want to say." Detective Scott asked Delacruz whether he knew about Breaux. Delacruz indicated that he had known Julie "had a boyfriend," but said that he didn't find out who it was until March 27, the day after Julie went missing. He said that his cousin, Nunley, had told him about Breaux on MySpace and showed him a picture **of** him and Julie. He asked Scott how long they had been dating, and Scott declined to provide him that information. He told Scott that he and Julie had been "intimate" a couple **of** times since they separated.

He **[*45]** then suggested that her friends knew where she was and were probably keeping Julie apprised **of** happenings concerning her disappearance, including the family's efforts to find her, which might make Julie "afraid **of** coming back" because she would "get a lot **of** heat from everybody." He also suggested that she would not want her friends and family to know about the "**third** guy" who was not her husband or new boyfriend.

Delacruz then asked if there were any "leads." Detective Scott told him that he had no reason to suspect him **of** foul play. Scott suggested to Delacruz that he attributed Julie's disappearance to a new romantic interest and an acrimonious relationship with her mother and informed him that he was terminating his investigation.

b. April 28 interview

On April 8, a charge was made to Julie's credit card from Best Buy. Detective David Gann **of** the APD missing-persons unit testified that he obtained surveillance video from the store to determine if Julie had been in the store. He showed Julie's family members the video, who indicated that they did not see Julie in the video.

Detective Scott requested another interview with Delacruz, which was conducted on April 28. Scott began by having **[*46]** Delacruz review the Best Buy surveillance tape to determine if he could identify Julie in it. Delacruz identified a woman he said might be Julie though he could not confirm. **2 ↓**

Scott then questioned Delacruz again about the last time he saw Julie, and Delacruz once more described her as unfocused and "spaced out" when she came to his house to pick up L.D. He emphasized that she did not appear to be excited to see L.D. unlike every other time that she had picked her up. He said she did not look "scared," but looked like there was "something that [she] was thinking a lot about . . . like, you know, 'Should I do this, should I do that?'"

Delacruz said that he had tried calling her cell phone after she left, but that his calls would go directly to a message indicating that the voicemail had not been set up. He denied having access to her MySpace account but indicated that he had sent her messages. Scott asked Delacruz if Julie had any hobbies, and he responded that Julie would spend time at a "place called the hooker bar" where she liked to smoke "to get mellowed out." He said she also "used to go [play] pool at Slick Willie's." He said she would go out with her friends without him and would **[*47]** "take[] off because she had the car." He said she tried to "control" him. He stated that they had "verbal fights. Never physical," but added that "she pushed [him] once."

When asked to describe their separation, Delacruz told Scott that Julie "just said that she fell out **of** love. That's the only explanation she gave me." He said he "tried to figure out why" and "tried to work things out" and had suggested marriage counseling. But "she just out **of** nowhere popped the question, 'Well, I want a divorce.' After we've been married five, six months." He asked why, and she told him she did not love him anymore. Delacruz said when he tried to talk to her about it, she would "get[] mad" and refuse. He did not mention his refusal to participate in the divorce proceeding or his aggressive and unstable behavior toward her. He said that Julie had been "rushing the divorce process" and wanted him to "hand in the papers real fast," but that he did not have the time or money to comply. He attributed her sense **of** urgency to her wanting government assistance for housing.

Delacruz stated that he did not like Julie's family because **of** "the way they treat her." He again suggested that they may have been responsible **[*48]** for Julie's disappearance. Specifically, he detailed a discordant relationship between Julie and Sandra. He explained that Sandra would say "[h]urtful things" to Julie and "always make her feel like crap" and that she would make Julie cry. He

described instances **of** physical abuse. He said Julie and Sandra had "I'm thinkin' a fight before she disappeared, or she ran off." Scott asked him if he thought that Sandra "could have done somethin' to her," and he agreed. He confirmed that Sandra could have gotten angry and physical "to the point that it went too far."

He cited a message that Petri had posted on MySpace to Julie regarding a fight between Julie and Sandra:

Julie, if your reading this, please listen. You and mom seriously need to talk. Yall are hurting me! This fight has gone on too long. Just thinking **of** you makes me want to come visit you and have an awesome time. . .without mom being brought up into a conversation. Well, I just wanted you to know that yalls fights could also affect the familly... (aspecially me)

Delacruz suggested that Petri had been trying to help smooth over a conflict between Julie and Sandra "probably like two or three weeks before" she disappeared. However, the message [***49**] contained a posting date **of** April 18, 2009, about a year before Julie was last seen.

Delacruz then suggested that Julie's family had accused him **of** involvement in Julie's disappearance in order to get custody **of** L.D. He said Sandra had been "pushing" his suicide attempt to law enforcement in her custody effort. He told Detective Scott that Sandra had obtained Medicaid for L.D., which Delacruz said he planned to "investigate." He said it was suspicious that Dora was making media appearances instead **of** Sandra. He said he believed Sandra knew something that she did not want to share. He said Sandra had been "acting weird, tell you the truth." He said she would cry "a dry cry," which made him think "maybe there was a fight involved and maybe she's just guilty about it." He said it "seemed like she's faking it." He then relayed a disjointed story about receiving a MySpace message from someone in Colorado advising him to get a lawyer to secure custody **of** L.D., although he could not produce the message upon Scott's request.

Delacruz also again alluded to Navarro being involved in Julie's disappearance and said that she might know something or be "hiding her." He said Navarro messaged him on [***50**] MySpace about not accepting Julie being with "this guy," referring to "James" in Colorado, but could not offer additional details or produce the message. Scott asked him if he knew whether Julie had been seeing anyone else, to which he responded, "That I know **of**, no." But he said there were times when he would get home late from work, so it was possible she had been seeing someone. He said that her days off were days he had to work, and Sunday was the "only day that [he] actually had off." However, Delacruz then told Scott that he had learned about Breaux from Scott in their prior interview, and Scott reminded Delacruz that he had told Scott he knew about the boyfriend at their previous interview. Delacruz then went back to his story about how Julie had "[fallen] out **of** love" with him, which he said hurt him because he "never had a lot **of** communication with" L.D. He again confirmed that he had not known about the boyfriend and still didn't know about him. He said that his cousin had sent him a picture **of** Julie with "this guy," but that he didn't know if he was "the boyfriend." He then asked Scott whether Julie had run off with Breaux.

23. Victoria discovers the large, freshly dug hole [*51**] in shed and makes a "frantic, frenzied phone call" to the police**

Liliana's boyfriend, Pedro Carrasco, testified that on May 4, he discovered what appeared to be a "freshly cut hole in the shed." The evidence established that this was the same hole that police had discovered when they first questioned Delacruz at his house on March 28, two days after Julie went missing. Carrasco explained that it appeared to have been "recently dug" because the top layer **of** soil had not dried out. He informed Delacruz's mother, Victoria, and said that Victoria called 911 because "she was concerned that her son might be involved in some kind **of** incident. It seemed fishy."

Victoria testified that everyone in the family had access to the shed but that people were rarely in there, "[p]ossibly twice a year or maybe less." She explained that if a person was back between the shed or playhouse and the tall fence in their backyard, he couldn't be seen from the house. She testified that, when she saw that the plywood had been loosened, she lifted it up and saw a deep and wide hole. She testified that the tools used to dig the hole were still there and that she believed that

"might have been put there to hide something" like [*52] drugs or money. She said she starting digging in it to see if something was buried in it. She also testified that the fact that Julie had been gone for a month had caused her concern.

Victoria confirmed that the hole had not been there previously. She said that when she told Delacruz about the hole, he denied knowing anything about it. She testified that he did not mention anything about the hole having been dug for plumbing purposes, as he had told the police when they discovered it shortly after Julie disappeared.

24. What the investigation revealed

APD Detective Jeff Greenwalt and another officer responded to Victoria's 911 call on May 4. Greenwalt testified that she had made a "frantic, frenzied phone call" asking them to come search the hole. He said that she was the only one home when they arrived. He described her as "in an emotionally ramped-up kind of state" and so "distraught" that they "had to call an ambulance to the house because of her accelerated heart rate and her nerves." She informed him that she had "started digging" in the hole with her hands "and then became scared." He said that she did not accompany them to the shed.

Detective Greenwalt testified that Victoria had [*53] confirmed that she had never seen that the plywood covering had been cut. She asked them to examine a mound of dirt that had been deposited behind the shed. He testified that several miscellaneous items, such as patio furniture, an old mattress, and a plastic cooler, had been "thrown haphazardly behind the shed on top of a large dirt and pile of leaves." Victoria told them that the items had been behind the shed, but the pile of dirt underneath them had not been there prior to the hole having been dug.

Greenwalt also observed several tools by the hole that appeared to have been used to dig it. The officers also found ammunition in a water bottle and "a few loose ones" by the hole, as well as a knife and blue latex gloves hidden under a picnic table in the backyard. They also saw "ashes and burned debris" on the ground near the shed that contained "some burned clothing . . . specifically what appeared to be . . . purple shoelaces."

The following day, the case was assigned to Detective Rogelio Sanchez of the APD homicide unit, who testified that the "trench was consistent with something that a person who had been killed could have been buried and hidden in."

25. Delacruz's uncharacteristic [*54] period of gaming inactivity the night before and day of Julie's disappearance

Evidence in the record established that Delacruz spent most of his time playing video games, including testimony from his and Julie's family members. Michael testified that he and Delacruz would play games for six to seven hours a day and that Delacruz would play with other people, too. He testified that Julie would ask Delacruz to do things with her, but that he would "keep playing for hours on end." Sandra testified that "Julie took on a lot more because George was always playing video games." She said that Delacruz was playing video games at the hospital while Julie was in labor with L.D. As previously discussed, the record indicates that Delacruz's gaming habit had caused Delacruz to neglect L.D. and was the primary reason for Julie's and Delacruz's separation.

Cellular-activity analyst Jim Cook produced evidence that corroborated the extensive witness testimony regarding Delacruz's Xbox usage. Cook obtained records from Microsoft from March to May 2010 that reflected Delacruz's Xbox usage during that period. Based on those records, Cook described Delacruz as a "heavy gamer, using his Xbox every day" during [*55] the period Cook reviewed. He testified that the records showed that Delacruz "played video games daily and [for] fairly long, established periods of time."

The records, however, revealed no Xbox activity for over 20 hours beginning on March 25 at 11:45 p.m. through March 26 at 8:23 p.m., which Cook described as "uncharacteristic of his gaming

activity." Then from 8:23 p.m. to 1:03 a.m. on March 27, Delacruz left the Xbox in "dashboard mode"—which Cook explained is like "standby mode" in which the device is on but not accessing any games—for nearly five hours, the longest time recorded for the review period. Cook again described this as "highly unusual and very uncharacteristic" given that the next-longest period **of** dashboard mode was less than two hours on March 19 and March 25. All other such periods lasted only minutes or seconds.

26. Events that occurred during Delacruz's period of gaming inactivity

The investigation uncovered events that occurred while Delacruz was not gaming from March 25 at 11:45 p.m. through March 26 at 8:23 p.m. On Friday, March 26, Victoria left for work around 5:30 a.m., and Delacruz took his sisters to school sometime before 9:15 a.m. Later that Friday morning, **[*56]** Delacruz and L.D. walked across the street to his neighbor's house. The neighbor, Joe Cruz, testified that he had been Delacruz's neighbor for nearly twenty years and this was the first time Delacruz had come to his home and spoken to him. Cruz confirmed that Delacruz told him that he and Julie were getting a divorce and that Julie had gone missing. Delacruz, however, did not file a missing-persons report and never mentioned the visit to law enforcement. Indeed, he later told Detective Scott he had not learned that Julie had gone missing until Sandra called his mother the following night, March 27.

Liliana testified that Delacruz picked her up from school around 4:15 p.m. She said that L.D. was with him, which she described as "unusual" since Julie was supposed to pick her up that morning and Julie "was really strict on what time [L.D.] had to be ready to be picked up."

Jason Jordan, a customer-service technician with AT&T, testified regarding damage caused to underground cables located in Delacruz's backyard on the morning **of** March 26. He responded to reports **of** service outage in the neighborhood, the first **of** which were received at 9:47 a.m. He was able to determine that the outage **[*57]** was caused by damage to cables that were approximately two to three feet beneath the surface just behind the playhouse in Delacruz's backyard. He testified that the area appeared to have been freshly dug and then covered up with dirt and wood.

Jordan explained that damage to underground cables is usually associated with construction, such as installation **of** a new fence or sidewalk, so it was "strange" that he found nothing but a woodpile covering the affected area. Once he was able to dig down to access the cable, he identified approximately three feet **of** damaged cable. He described the cable as "pockmarked" with "nicks" that appeared to have been caused by repeated forceful contact with the line, such as repeated shovel strikes. He confirmed that the cable was "fairly new" and appeared to have been "newly damaged."

27. Delacruz uses Julie's credit card on Friday and Saturday after she goes missing

The investigation also revealed that it had been Delacruz—and not Julie or another woman—who had used Julie's credit card after Julie disappeared.

Julie's bank records showed that Julie had last used her credit card on March 25 at an H-E-B grocery store in south Austin. That evidence was corroborated **[*58]** by video surveillance from that store that day that captured Julie by herself with a small amount **of** groceries. Extensive evidence established that the next transactions, however, were conducted by Delacruz on the afternoon **of** Friday, March 26. It showed that he had used Julie's credit card to purchase items from a Wal-Mart near his house for himself and L.D. and from two different McDonald's locations, one located inside the Wal-Mart and a freestanding location closer to Delacruz's house.

APD Detective Tony Hogue testified that he obtained a receipt from Wal-Mart that was time-stamped 2:20 p.m. on March 26. The receipt indicated that the purchases had been made with Julie's credit card. The purchases included a princess DVD; a coloring book; baby shampoo, wipes, and bubble bath; and an Xbox playing card that APD Detective William Summers was able to confirm was activated by Delacruz later that night.

Hogue testified that a purchase was made at the McDonald's inside the Wal-Mart at 2:23 p.m. and

another purchase was made at the second McDonald's location at 2:54 p.m. Julie's bank records corroborated Hogue's testimony. Liliana also testified that Delacruz had taken their sisters to the [*59] McDonald's location near Delacruz's house before Delacruz picked her up from school that afternoon around 4:15 p.m., which she confirmed was the McDonald's location they "would typically go to."

Video surveillance also captured Delacruz and L.D. at Wal-Mart at the time **of** the transactions. Delacruz and L.D. were wearing the same clothes as in Delacruz's MySpace profile picture, which evidence showed was taken at a carnival they attended that evening.

Further, Julie's bank records showed that transactions prior to that day had been processed as debit transactions, which required entry **of** a personal-identification number. By contrast, the March 26 transactions were processed as credit transactions, which did not. Her account reflected no additional activity transactions after March 26 other than some recurring automatic charges. Delacruz's own bank account reflected a negative balance at that time.

28. Law enforcement searches Delacruz's house and backyard

On May 14, police searched Delacruz's home pursuant to a search warrant. Victor Ceballos, an employee **of** the APD crime-scene unit, testified as to his findings. Among the items found at Delacruz's house were the items that Delacruz had [*60] purchased at Wal-Mart with Julie's credit card. Police also recovered a photo **of** Julie that had been torn up and taped back together; Julie's gym-membership card on the laundry-room floor next to Delacruz's bedroom; Julie's health-insurance card, a baseball bat, and unfired cartridge casings in Delacruz's room; and Julie's journals in the backyard playhouse.

Ceballos and Detective Sanchez testified that cadaver dogs had "alerted" at Delacruz's house and "had sniffed at" some items in the shed, which was locked when police arrived. Ceballos testified that, upon entering the shed, they observed that a piece **of** plywood had been cut from the floor and a large hole had been dug out. Ceballos testified that the hole measured approximately five-feet long, two-feet wide, and one-and-a-half feet deep. He testified that the soil was very rocky and required "[s]ome hard digging." He said there was a "big pry bar" next to the hole that was "used to break rocks and stones." He testified that the hole did not appear to have been related to plumbing or laying flooring.

29. Delacruz had Julie's cell phone after he saw her and had authored the texts from her phone and postings to her MySpace account that weekend [*61]

The investigation uncovered digital forensic evidence that established that Delacruz had possession **of** Julie's phone the morning **of** Friday, March 26, through the evening **of** Saturday, March 27, after which time her phone showed no additional activity.

Cook testified regarding Julie's phone activity during that time. He produced extensive digital forensic evidence that her phone never left Austin and was in fact with Delacruz at all times. His analysis showed that her phone had been taken near the following locations:

- Delacruz's house multiple times for extended periods from the morning **of** March 26 through the evening **of** March 27;
- Wal-Mart at the time Delacruz was using Julie's credit card;
- twice at Best Buy when Delacruz bought and returned various items, as demonstrated by receipts recovered from Delacruz's house;
- a carnival site that Delacruz had attended that weekend; and
- (Liliana's boyfriend) Carrasco's house, where multiple witnesses testified Delacruz

frequently visited.

Cook confirmed that there was not "[a]ny question" about whether Julie's phone had been near Delacruz's house during that time. Cook also testified that Julie's phone could not possibly have been in Colorado at any [*62] point during that time.

Cook further testified that Julie's phone activity changed "significantly" on Friday, March 26, and was "highly inconsistent with Julie's normal activity." He explained that, prior to that time, Julie's phone would arrive and depart from Delacruz's house within a few minutes. Beginning at approximately 10:50 a.m. on March 26, her phone was at his house for "extended periods of time, some in excess of three hours at a time, through the [March] 27th period mapped with multiple texts and data connections." He testified that "[t]his was uncharacteristic of the activity related to the device." Specifically, of the 126 texts that connected to her phone, 116 did so in the vicinity of Delacruz's house, and of 27 total data connections, 22 were near his house.

Also uncharacteristic of Julie's normal activity were that all calls during that time were either routed or went directly to voicemail and that there were "excessive periods where the device [was] turned off." Cook explained that, prior to that time, her device was "typically on all the time, and she's talking and texting, and there's activity." Her phone records reflected no additional activity after 11:46 p.m. on Saturday, [*63] March 27, and her phone was never recovered.

Cook testified regarding his digital analysis using geolocation technology and identified areas in which Julie's phone was located when her friends and family had attempted to contact her. The location of her phone corresponded with Delacruz's location, as established by other evidence, throughout the period reviewed. For example, that evidence placed the phone near Wal-Mart at approximately 2:00 p.m. on Friday, March 26, which was when Delacruz was there using Julie's credit card. It showed a text exchange with Breaux from 2:12 p.m. to 3:11 p.m., which is when Breaux testified that he received a text from Julie's phone saying, "I can't do this anymore," and he unsuccessfully attempted to have her confirm his middle name because he "felt like somebody else had her phone." The phone records also corroborated Breaux's testimony that he tried calling her during that time, but that his call went directly to voicemail.

The evidence also showed that the phone was near Delacruz's house from 10:50 a.m. to 1:49 p.m. on Friday, March 26, during which time a "[m]obile" message was posted to Julie's MySpace account reading, "going away hate all this bs want to [*64] run away." Julie's phone was again near Delacruz's house at 7:06 p.m. that night, when a message was added to Julie's MySpace account that read, in relevant part, "I'm here miles and miles away from everybody hopefully I will find myself in these few days. He better show me a good time here and make me forget about everything in Austin. I don't want to go back and tell him I screwed up I'm so afraid but I'll see what happens." Further, the evidence placed the phone near Delacruz's house at approximately 9:35 p.m. on Saturday, March 27, and indicated a six-minute data connection, which corresponded with the message posted to Julie's account at 9:40 p.m. that read, "Just wanted to say im ok and that people shouldnt worry about me and to stop bothering me i want to enjoy my time." Finally, the message that was posted to her account at 1:57 a.m. on Saturday, March 27, that read "really happy for leaving austin I love this place and i miss my ay bay bay" corresponded with digital evidence that placed her phone near Carrasco's house, which Delacruz frequently visited. [3] The phone was turned off at 2:08 a.m. The records revealed no texts or calls between Delacruz's and Julie's phones during [*65] that time.

30. No evidence of "James" or that Julie was ever in Colorado around the time she went missing

Substantial testimony established that no person existed who fit the description of "James." Julie's friends and family confirmed that Julie had never mentioned any such person. Walgreen's records confirmed no such person was either employed by Walgreen's or had patronized the pharmacy. Further, no evidence, apart from the substance of messages sent from Julie's phone, placed Julie in Colorado at any time.

31. Extensive investigation uncovered no evidence that Julie is alive

A variety of law-enforcement personnel testified as to their extensive but unsuccessful efforts to find any indication that Julie was still alive.

Detective Hogue testified that he searched various records for proof of life, such as credit reports and records pertaining to Julie's finances, social media, and telecommunications services. Detective Scott testified that he searched law-enforcement records, including the TCIC and NCIC databases, and contacted Homeland Security regarding any passport activity or international travel. He testified that he transferred the case to the homicide unit after uncovering no signs [*66] of life. Detective Summers testified that Julie had regularly refilled her monthly birth-control prescription from Walgreen's. She had last refilled it on February 28; she was scheduled to pick up her new refill the weekend she disappeared and never did.

Cassandra Cistone, who worked in the missing-persons unit at the Texas Department of Public Safety at the time, had the FBI run several searches for Julie's information "against all of the databases of every law enforcement agency in the country to see if anyone has run that name." She also searched other databases using Julie's personal information and activity—such as name, address, date of birth, and social-security number, license number, credit history, property ownership, criminal activity—and received no "hits" on any of that information. Cistone testified that she set notifications to alert her of any activity related to Julie and that she received no alerts.

James Midkiff of the Austin Regional Intelligence Center also testified as to his efforts. He searched utilities and insurance-claims databases; searched for visa or passport activity; and searched records regarding assets, addresses, phone numbers, email addresses, associates, [*67] relatives, employment activity, facial-recognition software, and land, sea, and airport checkpoints. He ultimately prepared a "no proof of life packet" with assistance from a Homeland Security agent.

Detective Sanchez testified that he searched extensively for signs of life, including running searches based on Julie's personal information, searching in facial-identification databases, and checking with various government agencies for activity associated with Julie's license and passport. He noted that Julie did not take her car with her or withdraw any money from her bank accounts before she disappeared. Sanchez confirmed that there is "plenty of circumstantial evidence that Julie is dead" and testified that he did not believe she was alive.

Julie's family had also utilized every resource at their disposal to locate Julie. That included appearances on various nationally televised programs to tell their story and to ask viewers to report any information they might have regarding Julie's whereabouts. None of these efforts were successful.

32. Delacruz described a violent altercation with Julie to a fellow inmate

Justin Stewart was an inmate in the facility where Delacruz was incarcerated [*68] after his arrest for Julie's murder. Stewart testified regarding an occasion in which he described Delacruz as "venting a little bit" to him. He said that Delacruz described an altercation that occurred between Julie and himself in which she hit her head, was bleeding, and became unconscious:

"[H]e was almost in tears . . . he felt bad about something. He just told me about an altercation he had with a girl that he had been seeing that, I guess, he had his child with. They had an argument. I believe it was over some guy that she was talking to or something. . . .

I know she tried to leave at one point, and he tried to stop her, and I mean things got physical. . . . He just talked about wrestling around with her. . . . At one point she had—they fell, and she hit her head. I don't remember what he said, whether it was the table or counter . . . I don't remember where he said this altercation happened inside the home. . . . She was apparently bleeding.

At that point, I guess she, like any female would—most females would in that situation was going to call. I don't know if she was going to call the cops or her dad or her brother, whoever. And, I mean, I guess he tried to stop her. . . . I mean, [*69] apparently the second time around—I know—I know she became unconscious. She was knocked out. And I know he freaked out. He didn't know what to do.

Stewart then confirmed that Delacruz had indicated that "she was unconscious at the end **of** their struggle."

B. The evidence and reasonable inferences therefrom prove beyond a reasonable doubt that Delacruz murdered Julie

The evidence used to convict Delacruz was solely circumstantial. However, [HN5↑](#) circumstantial evidence alone is sufficient to establish guilt, and the standard **of** review on **appeal** is the same for both direct-and circumstantial-evidence cases. [Guevara v. State, 152 S.W.3d 45, 49 \(Tex. Crim. App. 2004\)](#). In deciding the sufficiency **of** the evidence, we must look at "events occurring before, during, and after the commission **of** the offense and may rely on actions **of** the defendant which show an understanding and common design to do the prohibited act." *Id.* Each fact need not point directly and independently to the guilt **of** the appellant, as long as the cumulative effect **of** all the incriminating facts is sufficient to support the conviction. *Id.*

Although no single piece **of** evidence definitively proved that Delacruz murdered Julie, we conclude that the cumulative force **of** the foregoing evidence [*70] was sufficient to support the jury's determination that Delacruz murdered Julie at his home in Travis County on March 26.

1. Julie is deceased

The evidence supports an inference that Julie is deceased. First, it shows that she would not have absconded voluntarily: She maintained close relationships with her family and friends, was committed to her daughter, and was excited about her future with Breaux. She had made both short-and long-term plans for her life that she had expressed to various people and had never indicated a desire to run away and leave everything behind. Several witnesses testified that she did not use drugs or suffer mental-health issues or other medical conditions.

The evidence also shows that she did not trust Delacruz to properly care for L.D. and permits an inference that she would not have left L.D. with him had she decided to leave for an extended time. The record also reveals that she engaged in no conduct consistent with voluntary disappearance, such as taking any personal belongings or withdrawing funds from her banking accounts. There was evidence showing that she had established no new accounts or utilities, obtained or disposed **of** no assets, and that she [*71] had not traveled domestically or internationally.

Furthermore, several witnesses testified about their substantial efforts to uncover any evidence that Julie is alive. The absence **of** any such evidence, particularly in light **of** the difficulty **of** avoiding detection given available technology, permits an inference that she is not alive. The record also permits an inference that her life ended the morning **of** March 26.

2. The evidence supports the jury's verdict that Delacruz murdered Julie

The evidence is sufficient to support a finding that Delacruz (1) intentionally or knowingly caused Julie's death or (2) intended to cause her serious bodily injury and committed an act clearly dangerous to human life that caused her death. See [Tex. Penal Code § 19.02\(b\)\(1\), \(2\)](#). First, [HN6↑](#)

although motive and opportunity are not elements **of** murder and are not alone sufficient to prove identity, they are significant circumstances indicating guilt. [Temple v. State, 390 S.W.3d 341, 360 \(Tex. Crim. App. 2013\)](#); [Guevara, 152 S.W.3d at 50](#). The evidence establishes that Delacruz had a motive and opportunity to kill Julie.

The record demonstrates that Delacruz was physically and verbally abusive and controlling toward Julie during their marriage. He became emotionally unstable when she left him and adamantly opposed the divorce. **[*72]** He threatened her, stalked her, and engaged in irrational behavior such as threatening suicide and feigning amnesia for several weeks. The record further shows that, shortly before Julie disappeared—around the time that Julie began staying with Breaux and L.D. began referring to Breaux by name—Delacruz's unstable behavior escalated to rage as reflected in his social-media postings and emails to Julie. He accused her **of** lying to him, told her not to trust him, and indicated an intent to proceed with his "original plan." Julie feared Delacruz and had indicated to several people that she believed he intended to harm her.

Furthermore, Delacruz's uncharacteristic period **of** gaming inactivity coincided with Julie's disappearance. He had also asked her, for the first time, to keep L.D. an extra night and arranged for Julie to pick her up when no one would else would be at his house. He was the last person to see her alive. His sister testified that he had scratches on his face that afternoon, which were so deep that they were visible in the dark and at least three days later when police first questioned him.

Julie's body was never found, which supports an inference that it was intentionally **[*73]** concealed. The evidence supported an inference that Delacruz was digging grave-like holes in his backyard at the time **of** Julie's disappearance. It showed that one such hole was dug before 9:46 a.m. on March 26, the morning she disappeared, and that the other was dug before police questioned Delacruz on March 28. Delacruz had attempted to physically conceal these holes and provided inconsistent stories regarding his knowledge **of** them. Police also found a substantial amount **of** ash in his backyard that contained articles **of** clothing.

3. Delacruz engaged in behavior indicating a consciousness of guilt

HN7 Attempts to conceal incriminating evidence, inconsistent statements, and implausible explanations to the police are probative **of** wrongful conduct and are also circumstances **of** guilt. [Guevara, 152 S.W.3d at 50](#). This **Court** has long recognized the significance **of** evidence indicating a consciousness **of** guilt:

A "consciousness **of** guilt" is perhaps one **of** the strongest kinds **of** evidence **of** guilt. It is consequently a well accepted principle that any conduct on the part **of** a person accused **of** a crime subsequent to its commission, which indicates a "consciousness **of** guilt" may be received as a circumstance tending to prove **[*74]** that he committed the act with which he is charged. Attempts by a party to suppress or fabricate evidence have been held admissible against a witness.

[Torres v. State, 794 S.W.2d 596, 598 \(Tex. App.—Austin 1990, no pet.\)](#) (internal citations and quotations omitted).

Accordingly, perhaps the most incriminating evidence in the record was digital forensic evidence that established that Julie's phone was in the same locations as Delacruz after the last time anyone saw her, which permitted an inference that he was responsible for the numerous messages sent from her phone regarding her disappearance. The jury could have reasonably inferred that the messages were his efforts to convince her friends and family she had voluntarily left with another man. Such efforts are difficult to understand if, as according to Delacruz's statements to police, Julie had simply told him "she had some things to take care **of**" that weekend and that was the last he had heard from her.

Evidence establishing Delacruz's possession and use **of** Julie's credit card to buy items for himself and L.D. after he last saw her is similarly damaging. The incriminating effect **of** that evidence was exacerbated by evidence that showed that (1) Julie had possessed the credit card the day before she disappeared, **[*75]** (2) Delacruz had not disclosed his possession **of** that card to anyone, and (3) he had misled police and others about whether someone else had been using it after Julie disappeared, including Detective Scott during their April 28 interview when Scott showed him the Best Buy

surveillance video.

The record reveals numerous other instances **of** misleading and inconsistent statements that Delacruz made throughout the investigation to multiple witnesses, including law enforcement, his family, his neighbors, and Julie's family, as well as critical information he failed to disclose. For example, Detective Sanchez testified that Delacruz had informed his neighbors that it was he who had found Julie's car at Walgreen's and not Dora. Similarly, Delacruz's interviews with Detective Scott were replete with such statements and failures to disclose, which were contradicted by overwhelming evidence:

- his false statements regarding his efforts to call Julie after she disappeared and denying having access to her MySpace account;
- his false statements about when and how he discovered Julie had been seeing Breaux;
- his false statements that Julie would have wanted to leave L.D. with him if she was planning **[*76]** to be away;
- his false statements about being employed and his work schedule;
- his false statement as to when he discovered that Julie was missing and his failure to disclose that he had reported Julie missing to his neighbor that Friday morning;
- his misleading statements regarding the details **of** a conflict between Julie and Sandra;
- his depiction **of** Julie as irresponsible, promiscuous, and a drug user;
- his failure to disclose his aggressive and unstable behavior toward Julie;
- his failure to disclose his refusal to cooperate in the divorce proceedings; and
- his failure to disclose that he had her credit card and phone after she disappeared.

Delacruz also offered numerous, conflicting theories about what had happened to Julie that disparaged her and her friends and family—including that she had simply disappeared voluntarily; that she had been abducted by "weird friends"; that Navarro and Hays were "hiding her"; or that her mother had killed her—none **of** which were supported by other evidence. Detective Scott testified that he had "underestimated" Delacruz and that he had been "duped."

4. Other incriminating evidence

In addition to the foregoing, the record contains other incriminating **[*77]** evidence that supports the conviction. The record shows, for example, that Delacruz signed the waiver **of** service on Julie's divorce petition three days after she disappeared after refusing to sign it for months and that items belonging to Julie were found at his house, including her health-insurance card. Further, the digital evidence showing that Delacruz's highly uncharacteristic period **of** gaming inactivity coincided with the hours in which Julie went missing also tends to establish his involvement in her disappearance. Finally, Stewart testified that Delacruz had admitted to an act **of** physical violence against Julie "over some other guy that she was talking to" at his home that had left her bloodied and unconscious.

Based on the totality **of** the evidence, a jury could have reasonably concluded that Delacruz murdered Julie. While each piece **of** evidence lacked sufficiency in isolation, the consistency **of** the evidence and the reasonable inferences drawn therefrom were sufficient to support the verdict. See *Clayton*, 235 S.W.3d at 778; *Hooper*, 214 S.W.3d at 13 (each fact need not point directly and independently to guilt if the cumulative force **of** all incriminating circumstances is sufficient to support conviction). Therefore, after examining **[*78]** all the evidence in the case in the light most favorable to the verdict, we conclude that the cumulative force **of** the evidence is sufficient to permit a rational jury to find that the State proved all the elements **of** murder beyond a reasonable doubt.

C. Delacruz's arguments do not compel reversal

Delacruz's arguments challenge the sufficiency **of** the evidence to prove the elements **of** murder. Specifically, he argues that the evidence was insufficient to prove (1) that Julie is dead; (2) that he caused Julie's death; (3) that he possessed the requisite mental state in doing so; and (4) that the offense occurred in Travis County. In support, he cites the facts that the State produced no body (and thus no autopsy); no murder weapon; no physical evidence, such as DNA, blood, hair, or fiber; and no eyewitness testimony to the fatal act.

Delacruz cites no authority, however, that requires production **of** those specific types **of** evidence in order to prove the elements **of** murder. Rather, **HNS** the law is well settled that the elements **of** an offense may be proven by circumstantial evidence and reasonable inferences therefrom. See *Carrizales*, 414 S.W.3d at 742; *Clayton*, 235 S.W.3d at 778; see also *Fisher v. State*, 851 S.W.2d 298, 303 (Tex. Crim. App. 1993) (law no longer requires production **of** deceased's remains in **[*79]** murder prosecution). And, as previously detailed, the record in this case contains sufficient circumstantial evidence to permit inferences beyond a reasonable doubt as to each **of** the required elements.

Delacruz also challenges the sufficiency **of** Stewart's testimony to establish that Delacruz committed a criminal act against Julie that caused her death. He first argues that no evidence corroborated that testimony and tended to connect him with the offense as required under [Texas Code of Criminal Procedure article 38.075](#). However, as previously detailed, the record contains substantial evidence that tends to connect Delacruz with the offense committed.

He further complains about deficiencies in Stewart's testimony regarding when the described events occurred and the extent **of** Julie's injuries. But the State was not required to produce testimony showing that Delacruz admitted to every element **of** the charged offense. Rather, it was permitted to introduce evidence that tended to show that the offense occurred as charged. Accordingly, Stewart's testimony was additional evidence that tended to show that Delacruz committed violent acts against Julie that caused her to bleed and lose consciousness. See *Hooper*, 214 S.W.3d at 13 (reviewing **court** looks at cumulative **[*80]** force **of** all evidence and not at individual pieces **of** evidence); *Clayton*, 235 S.W.3d at 778 (reviewing **court** may not use a "divide-and-conquer approach, systematically isolating and then discounting the evidence supporting" a conviction); see also *McDuff v. State*, 939 S.W.2d 607, 615 (Tex. Crim. App. 1997) (holding evidence sufficient to support murder conviction despite no remains **of** victim where accomplice witness testified that appellant struck victim "with such force that it bounced her on the ground").

Furthermore, the State was not required to prove *how* Delacruz caused Julie's death, only that he did. The **court of criminal appeals** has explained that **HN9** "murder is a 'result **of** conduct' offense because it punishes the intentional killing **of** another regardless **of** the specific manner (e.g., shooting, stabbing, suffocating) **of** causing the person's death." *Young v. State*, 341 S.W.3d 417, 423 (Tex. Crim. App. 2011); see also *Sanchez v. State*, 376 S.W.3d 767, 774 (Tex. Crim. App. 2012) (gravamen **of** murder is causing death **of** person); *Ngo v. State*, 175 S.W.3d 738, 745-46 (Tex. Crim. App. 2005) (jury must agree that defendant committed murder but need not agree on "how" he committed murder).

The State introduced evidence **of** items found at Delacruz's home that Delacruz could have used to kill Julie, such as a baseball bat, a pry bar, and a knife. On closing, the State offered various theories as to how Delacruz committed the offense. Accordingly, **HN10** the **[*81]** charge alleged that Delacruz committed murder "by a manner and means unknown," which is permissible when, as here, "[a] limited list **of** known alternatives does not exist." *Moulton v. State*, 395 S.W.3d 804, 810 (Tex. Crim. App. 2013) (permitting charge **of** unknown manner and means because record did not point to conclusive list **of** possibilities, so there was "unlimited information that may be unknown"). If the evidence does not establish the precise manner and means, the charge should retain the "unknown" language because "[w]hat matters is that the jury was convinced, beyond a reasonable doubt, that appellant was the person who intentionally caused his wife's death, however he did it." *Id.* at 813 (Cochran, J., concurring). Therefore, the State was not required to establish that Delacruz caused Julie's death by the act Delacruz described to Stewart, namely, by causing her head to strike a hard surface, though his testimony is some evidence upon which the jury could have reasonably relied in reaching its verdict.

Delacruz further argues that this case is analogous to *Stobaugh v. State*, 421 S.W.3d 787 (Tex. App. —Fort Worth 2014, *pet. ref'd*). That case held that the record contained insufficient evidence to show conduct from which the jury could have inferred that Stobaugh possessed the requisite mental state to support a murder conviction. **[*82]** *Id.* at 864. The record in this case, by contrast, contains

substantial evidence that would permit an inference that Delacruz murdered Julie. Contrary to Delacruz's contention, the jury was not limited to inferring intent from evidence establishing *how* Delacruz killed Julie. Rather, the jury was free to infer intent from any circumstantial evidence, including Delacruz's acts, words, and conduct. See *Guevara*, 152 S.W.3d at 50; *Carrizales*, 414 S.W.3d at 745 (we must consider "the logical force **of** all the circumstantial evidence as it pertains to each element **of** the offense, including criminal intent"). The evidence here was sufficient to show that Julie's death was the result **of** an intentional act by Delacruz rather than by accidental or reckless conduct.

Delacruz also argues that this **Court's** recent decision in *Nisbett v. State*, No. 03-14-00402-CR, 2016 Tex. App. LEXIS 13252, 2016 WL 7335843 (Tex. App.—Austin Dec. 15, 2016, pet. filed) (mem. op., not designated for publication), compels reversal **of** his conviction. In *Nisbett*, this **Court** held that the circumstantial evidence was insufficient to support an inference that Nisbett had committed murder. 2016 Tex. App. LEXIS 13252, [WL] at *10-15. But **HN11** the question **of** whether the evidence—both circumstantial and direct—is sufficient to demonstrate the commission **of** a charged offense in a given case is a highly individualized inquiry that requires evaluation **of** the all [***83**] **of** the evidence in the record. See *Carrizales*, 414 S.W.3d at 742; *Clayton*, 235 S.W.3d at 778. The evidence in this case is quantitatively and qualitatively different from that presented in *Nisbett*. Our opinion regarding the sufficiency **of** the evidence in that case, therefore, does not compel reversal **of** the conviction in this case.

Here, the evidence demonstrating motive, intent, plan, preparation; concealment and extensive fabrication **of** evidence; inconsistent, false, and misleading statements by Delacruz; Delacruz's own statements about having committed a violent act against Julie; and the substantial evidence establishing that Julie is dead are sufficient to support the verdict.

D. The judgments of conviction

Our own review **of** the record has revealed a problem with the judgments **of** conviction. The indictment charged Delacruz with two counts **of** murder. **HN12** As a general rule, a "count" is used to charge a separate offense, and each paragraph within a count is used to allege a separate method **of** committing that offense. See *Fowler v. State*, 240 S.W.3d 277, 280 (Tex. App.—Austin 2007, pet. ref'd). Here, however, the language **of** the indictment alleged only one criminal offense and two possible methods **of** committing it, but the State separated the two alternative methods **of** committing the offense into two "counts" rather [***84**] than two paragraphs within the same alleged criminal offense. Count 1 **of** the indictment alleged one theory **of** how Delacruz committed murder under Section 19.02 **of** the Texas Penal Code by tracking the language **of** Subsection (b)(1), and Count 2 alleged a second theory **of** how Delacruz committed murder by tracking the language **of** Subsection (b)(2). See Tex. Penal Code §19.02(b)(1), (2). The jury charge then properly allowed the jury to convict Delacruz under either **of** the two alternative theories, and the jury returned a general verdict **of** guilty without indicating which subsection it relied upon. Thus, the indictment and jury charge authorized only one murder conviction. For reasons unknown, the trial **court** signed two judgments **of** conviction, one under Count 1 and one under Count 2. Because Delacruz was convicted **of** more offenses than were authorized by the indictment and jury charge, the error is not harmless, and we must strike one **of** the convictions. See *Martinez v. State*, 225 S.W.3d 550, 555 (Tex. Crim. App. 2007). We may strike either judgment to remedy the problem because the judgments reference the same punishment (life imprisonment). See *id.* Accordingly, we reverse and dismiss the judgment **of** conviction in Count 2. **4**

We further note that both judgments cited Section 19.02(b)(1) as the statute under which Delacruz was convicted [***85**] even though the jury was allowed to convict under either theory within Section 19.02 and returned a general guilty verdict without indicating which subsection it relied upon. **HN13** This **Court** has authority to modify incorrect judgments when the necessary information is available to do so. See Tex. R. App. P. 43.2(b); *Bigley v. State*, 865 S.W.2d 26, 27-28 (Tex. Crim. App. 1993). Accordingly, we modify the judgment **of** conviction in Count 1 to list the statute for the offense as "19.02(b) Penal Code" and to delete "COUNT 1" at the top **of** the judgment.

CONCLUSION

As modified, we affirm the judgment **of** conviction for Count 1. We reverse and dismiss the judgment **of** conviction for Count 2.

Cindy Olson Bourland ▼, Justice

Before Chief Justice Rose, Justices Field and Bourland

Count 1 Murder: Modified and, as Modified, Affirmed

Count 2 Murder: Reversed and Dismissed

Filed: April 21, 2017

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Footnotes

1 ¶

The trial **court** in which the divorce was pending issued a possession order that required Delacruz to contact Julie or a family member in the event **of** any "mental health emergency."

2 ¶

Police eventually determined that the charge was simply a recurring automatic withdrawal for a protection plan for an iPhone Julie had purchased. Delacruz later told a neighbor, Karen Ozment, that law enforcement had informed him that a woman had been using Julie's credit card.

3 ¶

Relatedly, Detective Sanchez testified that a message posted to Delacruz's MySpace account approximately one month earlier read, "chillin with my ay bay bay."

4 ¶

The appellate record shows that Delacruz's counsel filed a motion for judgment nunc pro tunc on the same day that she filed Delacruz's notice **of appeal**. In the motion, Delacruz asked the trial **court** to correct the two judgments because having two judgments meant that Delacruz appeared to have been convicted **of** more offenses than were authorized. The trial **court** granted Delacruz's motion that day and ordered the district clerk "to prepare a judgment which correctly shows that the Defendant was convicted **of** only one count **of** murder and received only one life sentence." It does not appear from the record that a subsequent judgment "which correctly shows that the Defendant was convicted **of** only one count **of** murder and received only one life sentence" was ever prepared or signed. We note, however, that modifying one judgment would not have been sufficient to correct the issue created by having two judgments; the erroneously entered second judgment also needed to be dismissed or vacated. See [Martinez v. State](#), 225 S.W.3d 550, 555 (Tex. Crim. App. 2007).

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