

AFFIRMED and Opinion Filed October 6, 2026



**In The
Court of Appeals
Fifth District of Texas at Dallas**

No. 05-25-01669-CR

**DEAUNDRE BERNARD WALKER, Appellant
V.
THE STATE OF TEXAS, Appellee**

**On Appeal from the 422nd Judicial District Court
Kaufman County, Texas
Trial Court Cause No. 24-90068-422-F**

MEMORANDUM OPINION

Before Justices Kennedy, Clinton, and Rossini
Opinion by Justice Kennedy

Deaundre Bernard Walker appeals from a judgment of conviction for the offense of murder. In several issues, Walker challenges the sufficiency of the evidence, the lack of sufficient non-accomplice testimony to connect him to the murder, the trial court's overruling of his objection to the admission of testimony concerning an extraneous offense, and the trial court's denial of his motion for directed verdict. We affirm the trial court's judgment of conviction. Because all issues are settled in law, we issue this memorandum opinion. TEX. R. APP. P. 47.4.

BACKGROUND

On February 5, 2024, at 5:57 a.m., the Forney Police Department responded to a shots-fired call and found Gabriel Diosdado¹ lying dead in the driveway of his mobile home. The police determined Diosdado had been fatally shot and recovered shell casings near his body. They located and interviewed his wife Mayra Lara, who indicated she and Diosdado had been living apart for a week, so she was not present when he was shot. During her interview, Lara spoke negatively of Diosdado and stated, among other things, she had been with appellant the night before at a park where he had been shooting a gun. And after that interview, the police suspected that appellant was involved in Diosdado's murder. After further investigation, the police arrested appellant. He was later indicted for the felony offense of capital murder of Diosdado while in the course of committing or attempting to commit a robbery of same.

A trial by jury began on November 17, 2025, at which appellant entered a plea of not guilty. The jury heard testimony from several witnesses, including Lara who was also charged with Diosdado's murder. After the State rested and outside the presence of the jury, appellant made a motion for a directed verdict, urging there was no physical evidence to place appellant at the scene of Diosdado's murder and no evidence the murder was committed during the commission of a robbery. The trial

¹ The indictment names the victim as Gabriel Diosdado Arteaga, but at trial, he was referred to as Gabriel Diosdado, so we likewise refer to the victim as Gabriel Diosdado in this opinion.

court denied the motion, and the defense proceeded to present testimony in the form of cross-examination of Lara. At the conclusion of evidence, the jury found appellant guilty of the lesser included offense of murder. Appellant opted for his punishment to be assessed by the trial judge, who assessed his punishment at life imprisonment.

Summary of Testimony and Evidence at Guilt–Innocence Phase of Trial

Diosdado’s ex-wife Christina Caballos testified she shared two adult sons with Diosdado and was close to him. According to Caballos, Diosdado was a talented carpenter who earned “pretty good money” and often worked from approximately 6 a.m. until midnight. She stated Diosdado owned his mobile home and had a camera system she helped him install. Caballos testified Diosdado kept his money in his home or car, not in a bank.

Forney Police Detective Jordan Bailey was the lead investigator in Diosdado’s murder and testified as to the investigation. He testified that when he arrived on the scene, he was notified that two shell casings were found near Diosdado’s body and he spoke to Diosdado’s ex-wife Caballos. He noticed a camera attached to Diosdado’s home, and, with assistance from Caballos, Bailey retrieved and reviewed the video from the morning of Diosdado’s murder. The video depicted Diosdado walking out his front door to his van. As he unlocked his van, a man ran up behind him holding a firearm and yelling commands at Diosdado to “go—in the house.” Diosdado screamed, and the man shot him, causing Diosdado to fall to the ground.

After a few seconds, the man shot Diosdado again. The man, who was wearing all black clothes, a ski mask, and red gloves, ran towards an apartment complex separated from Diosdado's home by a field approximately 900 feet in length.

Forney Police Detective Laramie Kennedy was one of the detectives who responded to the shots-fired call at Diosdado's home. At that scene, Kennedy learned that Diosdado was married to Lara and that she drove a blue GMC truck with black wheels. The detective recognized the description of the truck as similar to one from another shots-fired call he responded to the evening before the murder. Kennedy testified that when he responded to the prior shots-fired call at a nearby park, Eastside Park, Lara and appellant were both present. At trial, the jury viewed video from Kennedy's bodycam, which showed his brief interaction with Lara who was sitting in her truck and appellant who was standing next to Lara's truck, during which Kennedy asked if they had heard anything, and appellant denied having heard anything. Kennedy reviewed that video and from it was able to research the license plates of Lara's truck and a gray car parked next to it before he provided that information to Bailey.

Bailey testified that a few hours after Diosdado's murder, the police located Lara and Bailey interviewed her. During that interview, Bailey learned Lara had used methamphetamine hours before, that there was "bad blood" between her and Diosdado, and that when Diosdado was shot, she was not living with him. Lara also told Bailey that she and appellant had gone to Eastside Park the previous evening

and that appellant had fired a gun there. After that interview, Lara rode with a police officer to Eastside Park and showed him the location where she said appellant had fired a gun the night before Diosdado's murder. The police found four shell casings in the nearby park where she said they would be.

Lara testified for the State, stating she had been charged with capital murder for Diosdado's death. According to Lara, she and Diosdado had been together for a year and ten months, but in early 2024, she was unhappy with Diosdado and wanted him dead because she suspected he was having an affair with her sister. Lara had begun an affair of her own with appellant whom she had known for about three weeks. Around the time Lara met appellant, she saw that Diosdado had "a large amount of money . . . [l]ike \$30,000" that he had hidden inside the bedroom of their home. Diosdado soon thereafter moved that money. Lara told appellant about the money she had seen in the home and that she thought Diosdado had moved it to his van. According to Lara, appellant told her he broke into Diosdado's van the day after she told him about Diosdado's money, but he did not find any money. Diosdado also told Lara that his van had been broken into. Subsequently, appellant began multiple conversations with Lara about Diosdado's money. She also testified appellant did not seem interested in her desire to make Diosdado disappear until she told him about Diosdado's money. A week before the murder, Lara moved out of the house she shared with Diosdado.

The night before the murder, Lara and appellant went to Eastside Park, which was near Diosdado's house. That evening, Lara saw appellant shoot a gun four or five times in order to "test[] the gun . . . [b]ecause he was going to shoot [Diosdado] with the gun." Lara and appellant left the park to go to appellant's apartment, which was located across a field from Diosdado's home, so that Lara could point it out to appellant and tell him about Diosdado's cameras on his home and Diosdado's daily routine.

During their investigation of appellant, and pursuant to a search warrant for his home and vehicle, the police found a box of mixed ammunition, including the same brand as one of the shell casings from the park, and a black cloth mask. Bailey testified that appellant's vehicle had a Florida license plate that matched the gray car parked in Eastside Park the evening before the murder. Additionally, Forney Police Detective Michael Clay testified he was an evidence custodian and crime scene investigator on this case and that the caliber of the ammunition recovered from appellant's home was the same as the shell casings recovered from Eastside Park and Diosdado's home. The officers used Flock cameras to confirm that appellant's vehicle was driving in the direction of Eastside Park the day before the murder, driving in the opposite direction from the park the same day, and driving between appellant's home in the direction of the apartment complex behind Diosdado's home the morning of the murder. Bailey obtained video from the camera outside appellant's front door that showed appellant leaving his home at 4:04 a.m. the

morning of the murder and returning at 6:16 a.m. the same day. In an interview with Bailey, appellant admitted he bought a gun at Lara's request, that he was at Eastside Park with Lara the night before the murder, that he repaired the gun he purchased, and that he shot the gun more than once in the park. The police's review of appellant's social media revealed that less than a month before the murder, he posted a picture of himself wearing bright red gloves.

Dr. Fabiola Righi testified that he performed an autopsy of Diosdado and that he had found evidence of three gunshot wounds, one to Diosdado's head, one to his shoulder, and one to his arm. Dr. Righi testified that the injury to Diosdado's head would have been near immediately fatal and that the injury to Diosdado's shoulder would likely have resulted in his death within a few minutes. He also agreed it was possible that the wounds to Diosdado's arm and shoulder were sustained with one gunshot, such that evidence of only two gunshots would be consistent with his autopsy findings. Dr. Righi's autopsy report was entered into evidence, along with his conclusion that the cause of Diosdado's death was "rifle wounds, and the manner of death homicide." Dr. Righi also testified that Diosdado had on his person \$4,000 in hundred dollar bills.

James Jeffress testified he is the Section Supervisor of the Firearm and Toolmark Trace Evidence in Friction Ridge Sections at the Texas Department of Public Safety Crime Lab in Garland, Texas, and that he had examined the six shell casings collected from Diosdado's home and Eastside Park. Jeffress testified five of

the six were the same caliber, .223 Remington, and that all six had been fired from the same unknown firearm, one capable of chambering and firing a .223 Remington or 5.56x45mm caliber cartridge.

DISCUSSION

I. Record Contains Sufficient Evidence to Support Conviction for Murder

In his first issue, appellant challenges the legal sufficiency of the evidence to support his conviction for the offense of murder. Appellant argues that no physical evidence or testimony actually placed him at Diosdado's home at the time of the murder and that the only testimony that suggested appellant was involved in the murder was that of Lara, an accomplice.

When reviewing the sufficiency of the evidence, we view the evidence “in the light most favorable to the verdict and determine whether, based on the evidence and reasonable inferences therefrom, a rational juror could have found the essential elements of the crime beyond a reasonable doubt.” *Queeman v. State*, 520 S.W.3d 616, 622 (Tex. Crim. App. 2017) (quoting *Anderson v. State*, 416 S.W.3d 884, 888 (Tex. Crim. App. 2013) (citing *Jackson v. Virginia*, 443 U.S. 307, 318–19 (1979))). The jury is the sole judge of the credibility of witnesses and the weight to be given to their testimonies, and the reviewing court must not usurp this role by substituting its own judgment for that of the jury. *Id.* (citing *Montgomery v. State*, 369 S.W.3d 188, 192 (Tex. Crim. App. 2012)). The duty of the reviewing court is simply to ensure that the evidence presented supports the jury's verdict and that the State has

presented a legally sufficient case of the offense charged. *Id.* (citing *Montgomery*, 369 S.W.3d at 192). When the reviewing court is faced with a record supporting contradicting inferences, the court must presume that the jury resolved any such conflicts in favor of the verdict, even if not explicitly stated in the record. *Id.* (citing *Montgomery*, 369 S.W.3d at 192). “Under this standard, evidence may be legally insufficient when the record contains either no evidence of an essential element, merely a modicum of evidence of one element, or if it conclusively establishes a reasonable doubt.” *Id.* (quoting *Britain v. State*, 412 S.W.3d 518, 520 (Tex. Crim. App. 2013) (citing *Jackson*, 443 U.S. at 320)).

A person commits the offense of murder if the person intentionally or knowingly causes the death of an individual. TEX. PENAL CODE § 19.02(b)(1).

The record contains the following evidence to support the conviction. The jury viewed a video showing Diosdado walking out of his home and being ambushed by a slim man in dark clothing, a dark mask, and bright red gloves who yelled commands at Diosdado before shooting him twice. The video showed the man run away from Diosdado’s home in the direction of the field separating Diosdado’s home from the Eastgate Village, an apartment complex. Another video shows appellant leaving his home before the murder in dark clothing covered by a coat and returning after the murder in dark clothing without the coat. The police recovered a dark mask from appellant’s vehicle. The police also found a photograph of appellant posted one month before the murder on social media in which appellant is wearing bright

red gloves. Based on information from Lara, the police examined an area in Eastside Park where she told police that appellant was firing a gun. The police recovered shell casings from that park and Diosdado's home that were both fired from the same weapon. Appellant admitted to obtaining a firearm using money from Lara and meeting her at Eastside Park the day before the murder where he repaired the firearm and fired it. Appellant admitted Lara told him that Diosdado kept a lot of cash and that she had asked him to do bodily harm to Diosdado.

Viewing the evidence in the light most favorable to the verdict, we conclude, based on the foregoing evidence and reasonable inferences therefrom, a rational juror could have found the essential elements of murder beyond a reasonable doubt. *See Queeman*, 520 S.W.3d at 622.

We overrule appellant's first issue.

As part of his first issue, appellant urges that Lara's testimony is insufficient and unreliable and therefore could not support his conviction. As for reliability, the jury is the sole judge of the credibility of witnesses and the weight to be given to their testimonies, and we must not usurp this role by substituting our own judgment for that of the jury. *See Queeman*, 520 S.W.3d at 622. As for whether such testimony was insufficient as accomplice testimony, we address that argument in the second issue herein.

II. State Presented Sufficient Non-Accomplice Evidence

In his second issue, appellant asserts the State failed to present sufficient non-accomplice evidence to connect appellant to the murder as required by article 38.14 of the code of criminal procedures.

“A conviction cannot be had upon the testimony of an accomplice unless corroborated by other evidence tending to connect the defendant with the offense committed; and the corroboration is not sufficient if it merely shows the commission of the offense.” *State v. Ambrose*, 487 S.W.3d 587, 593 (Tex. Crim. App. 2016) (quoting TEX. CODE CRIM. PROC. art. 38.14). Therefore, if an accomplice to the offense testifies for the State, the accomplice’s testimony must be corroborated by non-accomplice evidence that tends to “connect the accused to the offense.” *Id.* (quoting *Smith v. State*, 332 S.W.3d 425, 442 (Tex. Crim. App. 2011)). Such evidence may be either direct or circumstantial. *Id.* (citing *Cathey v. State*, 992 S.W.2d 460, 462 (Tex. Crim. App. 1999)).

When evaluating the sufficiency of corroboration evidence under the accomplice-witness rule, we “eliminate the accomplice testimony from consideration and then examine the remaining portions of the record to see if there is any evidence that tends to connect the accused with the commission of the crime.” *Malone v. State*, 253 S.W.3d 253, 257 (Tex. Crim. App. 2008) (quoting *Solomon v. State*, 49 S.W.3d 356, 361 (Tex. Crim. App. 2001)). To meet the requirements of the rule, the corroborating evidence need not prove the defendant’s guilt beyond a

reasonable doubt by itself. *Id.* (citing *Trevino v. State*, 991 S.W.2d 849, 851 (Tex. Crim. App. 1999), and *Gill v. State*, 873 S.W.2d 45, 48 (Tex. Crim. App. 1994)). Rather, the evidence must simply link the accused in some way to the commission of the crime and show that “rational jurors could conclude that this evidence sufficiently tended to connect [the accused] to the offense.” *Id.* (quoting *Hernandez v. State*, 939 S.W.2d 173, 179 (Tex. Crim. App. 1997)). There is no set amount of non-accomplice corroboration evidence that is required for sufficiency purposes; “[e]ach case must be judged on its own facts.” *Id.* (quoting *Gill*, 873 S.W.2d at 48). In the past, we have observed that circumstances that are apparently insignificant may constitute sufficient evidence of corroboration. *Id.* (citing *Trevino*, 991 S.W.2d at 852). Additionally, we have stated that “[p]roof that the accused was at or near the scene of the crime at or about the time of its commission, when coupled with other suspicious circumstances, may tend to connect the accused to the crime so as to furnish sufficient corroboration to support a conviction.” *Id.* (quoting *Brown v. State*, 672 S.W.2d 487, 489 (Tex. Crim. App. 1984)). But “mere presence alone of a defendant at the scene of a crime is insufficient to corroborate accomplice testimony.” *Id.* (quoting *Golden v. State*, 851 S.W.2d 291, 294 (Tex. Crim. App. 1993) (citing *Meyers v. State*, 626 S.W.2d 778, 780 (Tex. Crim. App. 1982))).

Appellant argues that Lara was an accomplice-witness and that the State provided insufficient corroborating evidence to connect him to the murder. Appellant argues the video of the masked and gloved man shooting Diosdado shows

only the commission and manner of the offense and does not identify appellant as the shooter. He urges the following is also insufficient to connect him to the offense: evidence linking the firearm that committed the offense with the firearm that shot the casings; evidence of appellant's car traveling to Eastside Park the day before the murder, leaving the park the same day, and leaving appellant's home the morning of the murder; and evidence that appellant was meeting with Lara the day before the murder.

Here, appellant admitted he obtained a firearm and shot it at Eastside Park the night before the murder, that he was having an affair with Diosdado's wife Lara, that he and Lara went to the parking lot of the Eastgate Village, that Lara had pointed out Diosdado's van and home to him, and that Lara told him to meet her at the Eastgate Village the morning of the murder at 5:30 a.m. Appellant also admitted to being at the Eastgate Village at the time Diosdado was murdered. Appellant admitted Lara had told him about the large amount of money Diosdado had and that she had asked him many times to do bodily harm to her husband. Additionally, the record reflects appellant left his home approximately two hours before the shots-fired call at Diosdado's home and returned approximately twenty minutes after the call. In the video of appellant returning to his home, he wore dark clothing similar to that of the man who shot Diosdado. The record reflects that the police found a box of mixed ammunition in appellant's bedroom that contained at least one of the same brands of ammunition recovered from Eastside Park.

Accordingly, we conclude the foregoing establishes not only appellant's presence near the scene of the crime but also that he had acquired a firearm, shot the firearm the night before, agreed to meet with Lara at the scene of the crime, knew that Diosdado kept a large amount of money, and had been asked by Lara multiple times to do bodily harm to Diosdado. We conclude the jury could have rationally found that the corroborating evidence sufficiently tended to connect appellant to the murder of Diosdado as required by article 38.14.

We overrule appellant's second issue.

III. Testimony of Extraneous Offense

In his third issue, appellant argues the trial court erred by overruling his objections to evidence that he had broken into Diosdado's van as violating rules 104(b),² 403,³ and 404(b)⁴ of the rules of evidence. The State responds that the trial

² "When the relevance of evidence depends on whether a fact exists, proof must be introduced sufficient to support a finding that the fact does exist. The court may admit the proposed evidence on the condition that the proof be introduced later." TEX. R. EVID. 104.

³ "The court may exclude relevant evidence if its probative value is substantially outweighed by a danger of one or more of the following: unfair prejudice, confusing the issues, misleading the jury, undue delay, or needlessly presenting cumulative evidence." TEX. R. EVID. 403.

⁴ Rule 404(b) addresses use of evidence of crimes, wrongs, or other acts:

(1) *Prohibited Uses*. Evidence of a crime, wrong, or other act is not admissible to prove a person's character in order to show that on a particular occasion the person acted in accordance with the character.

(2) *Permitted Uses; Notice in Criminal Case*. This evidence may be admissible for another purpose, such as proving motive, opportunity, intent, preparation, plan, knowledge, identity, absence of mistake, or lack of accident. On timely request by a defendant in a criminal case, the prosecutor must provide reasonable notice before trial that the prosecution intends to introduce such evidence--other than that arising in the same transaction--in its case-in-chief.

TEX. R. EVID. 404(b).

court did not abuse its discretion in overruling appellant's objection and that the admission of the evidence did not violate rule 403 of the rules of evidence.

At trial and outside the presence of the jury, the following exchange, including defense counsel's objection, took place:

STATE: Our next witness is Mayra Lara, the co-defendant in this case. And I would just – outside presence of the jury like to proffer that I do believe there will be 404(b) testimony that has been disclosed to [defense counsel] via 404 motions.

Specifically, that the van was prior -- there was a prior break-in of Gabriel's van, and that was committed by Deaundre Walker, and he told her about it.

We believe that goes directly to motive of robbery, Your Honor.

THE COURT: Response.

DEFENSE: I don't know that goes directly to robbery. He didn't try to get in the van the day it happened.

It's my understanding, at least from what I saw, everyone always said that the break-in of the van was a month or two before that, and Mr. Walker only had been working there for about two or three weeks. I don't think the timeline matches up either.

THE COURT: Your objection is relevance.

DEFENSE: Well, the objection is relevance. It's 403, that confrontation clause, but

THE COURT: So 404, obviously, the evidence could come in for plans, motive, any of those number of reasons, but what I hear you saying is it falls outside the time of relevance.

DEFENSE: I believe it does.

THE COURT: And you want me to do the balancing test based on 403 that is more prejudicial than probative.

DEFENSE: Yes, Your Honor.

The Texas Court of Criminal Appeals has “consistently held that the failure to object in a timely and specific manner during trial forfeits complaints about the admissibility of evidence.” *Wade v. State*, No. 05-23-01244-CR, 2026 WL 978583, at *5 (Tex. App.—Dallas Apr. 10, 2026, pet. ref’d) (mem. op., not designated for publication) (quoting *Irsan v. State*, 708 S.W.3d 584, 603 (Tex. Crim. App. 2025) (citing *Saldano v. State*, 70 S.W.3d 873, 889 (Tex. Crim. App. 2002)) (citing TEX. R. APP. P. 33.1). The complaining party must let the trial judge know “what he wants and why he thinks he is entitled to it, and do so clearly enough for the judge to understand and at a time when the trial court is in a position to do something about it.” *Id.* (quoting *Bekendam v. State*, 441 S.W.3d 295, 300 (Tex. Crim. App. 2014)). Further, although we are not hyper-technical in our error-preservation examination, the point of error on appeal must comport with the objection made at trial. *Id.* (citing *Bekendam*, 441 S.W.3d at 300).

Although defense counsel referenced “relevance, 403, [and] the confrontation clause,” defense counsel then agreed with the trial court that the ground for the objection was “the balancing test based on 403 that is more prejudicial than probative.” Thus, we conclude the trial judge understood the only ground for the objection to be rule 403.

In his brief, appellant argues he “renewed his objections to the extraneous offense by and through his request for a directed verdict.” He urges the following constitutes those renewed objections:

DEFENSE: Moreover, the bigger issue on the directed verdict charge is there's been zero evidence that a robbery was going on at the time. There's got to be some type of evidence, as the Court well knows, that the way this is indicted, during the commission of a robbery, this individual was intentionally killed. There's nothing to indicate that a robbery was going on. The most we've seen is maybe someone broke into this van three weeks before, but nothing was taken, nothing was asked for. There's no evidence that a robbery was even thought out.

I know it's the State's position that must have been the plan, but the fact that they want it to be doesn't make it so. There's no evidence to indicate that's what happened.

The standard for admission of extraneous-offense evidence is high: "a trial court cannot admit extraneous-offense evidence unless a jury could find beyond a reasonable doubt that the defendant committed the extraneous offense." *Inthalangsy v. State*, 634 S.W.3d 749, 757 (Tex. Crim. App. 2021) (quoting *Fischer v. State*, 268 S.W.3d 552, 558 (Tex. Crim. App. 2008) (citing *Harrell v. State*, 884 S.W.2d 154, 160 (Tex. Crim. App. 1994) (op. on rehearing)) (citing TEX. R. EVID. 104(b), 404(b)). We disagree that the foregoing could be interpreted to argue that the evidence of appellant's breaking into Diosdado's van was insufficient to be admissible pursuant to rules 104(b) or 404(b). *See id.*

Accordingly, we conclude that appellant preserved only rule 403 as a ground for his objection to the evidence he committed the extraneous offense of breaking into Diosdado's van approximately one month prior to the murder. *See, e.g., James v. State*, 555 S.W.3d 254, 259 (Tex. App.—Texarkana 2018, pet. ref'd, untimely filed) ("Because our appellate record reflects that James did not argue that the State

failed to present sufficient connecting evidence after Adkinson’s testimony, we find his Rule 104(b) issue unpreserved.”).

We review a trial court’s decision to admit evidence of prior crimes, wrongs, or bad acts for an abuse of discretion. *Chapman v. State*, No. 05-22-00568-CR, 2023 WL 4144746, at *5 (Tex. App.—Dallas June 23, 2023, no pet.) (mem. op., not designated for publication) (citing *Andrews v. State*, No. 05-21-00388-CR, 2023 WL 3089812, at *1 (Tex. App.—Dallas Apr. 26, 2023, no pet.) (mem. op. nunc pro tunc, not designated for publication) (citing *Powell v. State*, 63 S.W.3d 435, 438 (Tex. Crim. App. 2001))). Under that standard, we affirm admissibility rulings when they are within the zone of reasonable disagreement. *Id.* (citing *Andrews*, 2023 WL 3089812, at *1 (citing *James v. State*, 623 S.W.3d 533, 541 (Tex. App.—Fort Worth 2021, no pet.))).

Rule 403 permits a trial judge to exclude relevant evidence “if its probative value is substantially outweighed by a danger of one or more of the following: unfair prejudice, confusing the issues, misleading the jury, undue delay, or needlessly presenting cumulative evidence.” *See* TEX. R. EVID. 403. To be clear, Rule 403 does not exclude all prejudicial evidence and instead focuses only on the danger of “unfair” prejudice. *Chapman*, 2023 WL 4144746, at *5 (citing *State v. Mechler*, 153 S.W.3d 435, 440 (Tex. Crim. App. 2005)).

In determining whether it was error to admit the evidence under Rule 403, we balance the claimed probative force of the proffered evidence along with the

proponent’s asserted need for that evidence against (1) any tendency of the evidence to suggest that the case would be decided on an improper basis; (2) any tendency of the evidence to confuse or distract the jury from the main issues; (3) any tendency of the evidence to be given undue weight by a jury that has not been equipped to evaluate the probative force of the evidence; and (4) the likelihood that presentation of the evidence will consume an inordinate amount of time or merely repeat evidence already admitted. *Id.* (citing *Henley v. State*, 493 S.W.3d 77, 93 (Tex. Crim. App. 2016)). Of course, these factors may well blend together in practice. *Id.* (citing *Gigliobianco v. State*, 210 S.W.3d 637, 642 (Tex. Crim. App. 2006)).

The term “probative value” refers to “the inherent probative force of an item of evidence—that is, how strongly it serves to make more or less probable the existence of a fact of consequence to the litigation—coupled with the proponent’s need for that item of evidence.” *Gigliobianco*, 210 S.W.3d at 641. As further explained, “[w]hen the proponent [of an item of evidence] has other compelling or undisputed evidence to establish the proposition or fact that the [item of evidence] goes to prove, the [probative value of the item of evidence] will weigh far less than it otherwise might in the probative-versus-prejudicial balance.” *Id.* (quoting *Montgomery v. State*, 810 S.W.2d 372, 390 (Tex. Crim. App. 1990) (op. on reh’g)). Here, the video of Diosdado’s murder shows a masked man in dark clothes running up to Diosdado out of dark surroundings and ordering him to “go, let’s go—in the house” before shooting him. The State offered evidence that Diosdado kept

thousands of dollars in cash either in his home or his van, that Lara had told appellant of this money and where she suspected Diosdado kept it, and that Diosdado's van had been broken into approximately one month before his murder. The evidence that appellant broke into Diosdado's van makes the murder more probable by offering a motive for the murder and by explaining why the man who shot Diosdado attempted to order him back into his home before shooting him. We conclude the trial court could have found the probative force and the State's need for the evidence was great and weighed in favor of its admission.

Weighing the foregoing against the remaining factors of the requisite balancing test, we conclude the trial court did not err. Evidence that appellant previously broke into Diosdado's van to steal money from him is a crime far less serious in nature than that of murder, and therefore, we conclude there is little tendency for the evidence to suggest the jury would decide appellant committed the murder because he broke into the van. We further conclude the evidence was unlikely to confuse or distract from the main issues of trial as the evidence provided a motive for the murder. As for whether the evidence would be given undue weight by the jury, we note the evidence is simply that appellant previously attempted to break into Diosdado's van, a nonviolent crime unlikely to sway a jury on emotional grounds. Finally, the evidence in question represents a small portion of the overall record and was not discussed by the State in closing arguments.

We overrule appellant's third issue.

IV. Motion for Directed Verdict

In his fourth issue, appellant asserts the trial court erred by denying his motion for directed verdict. At trial, appellant made a motion for directed verdict in which he urged—in addition to the earlier-mentioned challenge to sufficiency of the evidence of a robbery occurring at the time of the murder—that “there’s no physical evidence to put my client at the scene.”

In criminal cases, a challenge to the denial of a motion for directed verdict is treated as a challenge to the legal sufficiency of the evidence and is reviewed under the standard applicable to a legal sufficiency challenge. *Garcia-Arrendondo v. State*, No. 05-17-00814-CR, 2018 WL 6566683, at *6 (Tex. App.—Dallas Dec. 13, 2018, pet. ref’d) (mem. op., not designated for publication) (citing *Williams v. State*, 937 S.W.2d 479, 482 (Tex. Crim. App. 1996)). Consequently, we consider whether any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt, after viewing all of the evidence in the light most favorable to the verdict. *Id.* (citing *Zuniga v. State*, 551 S.W.3d 729, 732 (Tex. Crim. App. 2018)). Here, the jury convicted appellant of the lesser included offense of murder. Therefore, specific to appellant’s complaint, in addressing his fourth issue, we consider whether any rational trier of fact could have found beyond a reasonable doubt that appellant intentionally or knowingly caused the death of Diosdado. *Id.*; *see also* TEX. PENAL CODE § 19.02(b)(1). Having concluded in addressing his first issue that legally sufficient evidence supports his conviction for murder, we similarly

conclude here that a rational trier of fact could have found beyond a reasonable doubt that appellant intentionally or knowingly caused the death of Diosdado. *See* TEX. R. APP. P. 47.4.

We overrule appellant's fourth issue.

V. Cumulative Effect of Alleged Errors

In his fifth and final issue, appellant urges the cumulative effect of the errors he has asserted “casts a shadow upon the integrity of the verdict” and thus entitles him to reversal and acquittal or reversal and remand for new trial. The doctrine of cumulative error provides that the cumulative effect of several errors can, in the aggregate, constitute reversible error, even though no single instance of error would. *Holloway v. State*, No. 05-14-01244-CR, 2016 WL 3098297, at *4 (Tex. App.—Dallas May 25, 2016, no pet.) (mem. op., not designated for publication) (citing *United States v. Bell*, 367 F.3d 452, 471 (5th Cir.2004), and *Estrada v. State*, 313 S.W.3d 274, 311 (Tex. Crim. App. 2010)). Non-errors, however, do not produce harm in their cumulative effect. *Id.* (citing *Chamberlain v. State*, 998 S.W.2d 230, 238 (Tex. Crim. App. 1999), and *Turner v. State*, 87 S.W.3d 111, 118 (Tex. Crim. App. 2002)). Having concluded the trial court did not err as appellant alleged, we overrule this issue as well.

CONCLUSION

We affirm the trial court's judgment.

/Nancy Kennedy/
NANCY KENNEDY
JUSTICE

DO NOT PUBLISH
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