NUMBERS 13-19-00147-CR, 13-19-00148-CR, 13-19-00149-CR, AND 13-19-00150-CR

COURT OF APPEALS

THIRTEENTH DISTRICT OF TEXAS

CORPUS CHRISTI - EDINBURG

AMANDA KRISTENE HAWKINS, **Appellant,**

v.

THE STATE OF TEXAS, **Appellee.**

On appeal from the 216th District Court of Kerr County, Texas.

MEMORANDUM OPINION

Before Justices Benavides, Hinojosa, and Tijerina
Memorandum Opinion by Justice Hinojosa

Appellant Amanda Kristene Hawkins pleaded guilty to two charges of abandoning or endangering a child, elderly, or disabled person and two charges of injury to a child, all second-degree felonies.[1] *See* TEX. PENAL CODE ANN. §§ 22.041(e), 22.04(e). By four

[1] The parties agreed to consolidate all four charges into one case for the purposes of appeal. Trial

issues, Hawkins challenges: (1-2) the denial of her motions to suppress, (3) a deadly weapon finding, and (4) the order to stack her sentences. We affirm.

I. BACKGROUND[2]

On Thursday, June 8, 2017, B.H.[3], a one-year-old girl, and her sister A.O., a two-year-old, were rushed to Sid Peterson Hospital in Kerrville, Texas. The girls were unresponsive. Their mother, Hawkins, told doctors that her daughters had been playing near a park creek and may have ingested poisonous plants. Given the girls' grave condition, doctors in Kerrville quickly made the decision to airlift them to University Hospital in San Antonio, Texas for more intensive testing and treatment. Hawkins followed in her own vehicle.

A. The Investigation

The Kerr County Sheriff's Department assigned Investigator Carl Arredondo to this case. He drove to University Hospital from Kerrville to speak with Hawkins. While driving to San Antonio, Arredondo had conversations with Investigator James Ledford who remained in Kerr County interviewing Hawkins's friend Kevin Franke, who was with Hawkins the day before. Through Arredondo's discussions with Ledford, Arredondo learned that the girls' condition may have been caused because they were left unattended

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court cause number A17599 is appellate cause number 13-19-00149-CR; trial court cause number A17598 is appellate cause number 13-19-00148-CR; trial court cause number A17597 is appellate cause number 13-19-00147-CR; and trial court cause number A17600 is appellate cause number 13-19-00150-CR.

[2] This case is before this Court on transfer from the Fourth Court of Appeals in San Antonio pursuant to a docket-equalization order issued by the Supreme Court of Texas. *See* TEX. GOV'T CODE ANN. § 73.001.

[3] We use initials to protect the identity of children. *See Salazar v. State*, 562 S.W.3d 61, 63 n.1 (Tex. App.—Corpus Christi–Edinburg 2018, no pet.).

in a vehicle, not because they ingested a dangerous plant.

Hours after Arredondo arrived in San Antonio, B.H. died. Arredondo approached Hawkins to extend his condolences and to ask her if she would be willing to speak with him regarding what happened. She agreed. Arredondo explained that the interview had to be recorded, per Kerr County Sheriff's Department policy. Accordingly, he informed Hawkins that the interview would be conducted at the University of Texas Health Science Center (UTHSC) Police Department substation, which had recording capabilities.

1. The First Interview at the Hospital Police Station

Hawkins was given a courtesy ride to the UTHSC police substation by a Bexar County Sheriff's deputy assigned to the hospital because she was unfamiliar with the area. Arredondo traveled separately in his own vehicle. Hawkins went into the interview room along with Arredondo, Texas Ranger Kevin Wright, and Child Protective Services Investigator Rebecca Slagel. Wright and Slagel were also investigating the matter.

Ranger Wright described the interview location as a square room with some file cabinets, a table and chairs, and no windows. Hawkins was never Mirandized or given warnings from Texas Code of Criminal Procedure article 38.22. She was not handcuffed. Arredondo asked Hawkins if she needed to use the restroom, but she declined. He gave her a bottle of water to drink. The door to enter and exit the room was unlocked.

Hawkins began the interview by stating that she was at the park with her friend Franke when the girls became ill. At some point, Investigator Arredondo explained to

Hawkins that he "needed her to be honest" as he had received differing information from Investigator Ledford who interviewed her friend Franke. It was then that Hawkins explained the following:

> [S]he said that they had gone over to a friend's house, she didn't know the exact address . . . and that there was a gathering of other friends there and that they had stayed up until 5:00 in the morning and the children had been in the car, the way it was described, from dark the day before until daylight the Wednesday that they were ultimately discovered . . . .

The interview lasted about an hour and a half. Hawkins never asked to leave. Arredondo testified that "she was not in custody and she was not under arrest." Wright asked for Hawkins's permission to look through her phone and in her vehicle. Hawkins consented to both requests and gave him her phone password and car keys.

When the interview was over, authorities allowed Hawkins to return to the hospital to be with her daughter A.O. Hawkins was not guarded or followed at the hospital. In the meantime, Investigator Ledford from the Kerr County Sheriff's office applied for a warrant for Hawkins's arrest. Ledford did not use any statements from Hawkins's interview with Arredondo to draft the warrant. Instead, his warrant appeared to be based on the conversations he had with Franke and other friends Hawkins had been with the previous evening. After Hawkins's second daughter, A.O., died, Hawkins was arrested and taken to a Bexar County jail. Four days later, on Monday, June 12, 2017, the Kerr County Sheriff's Office arrived and transported her back to Kerr County Jail.

2. The Second Interview at the Kerr County Police Station

After Hawkins arrived at the Kerr County jail, she was taken to an interview room. Captain Carol Twiss, a 25-year veteran of the Kerr County Sheriff's Office, interviewed her. Unbeknownst to Twiss, Hawkins had been appointed an attorney the Friday before, on June 9, 2017.

The interview took place in a room with audio and video capabilities. Before the interview began, Twiss read Hawkins her *Miranda* warnings from Texas Code of Criminal Procedure article 38.22. Hawkins initialed each right and signed a document indicating she understood these rights. At one point in the interview, Hawkins asked, "When can I get an attorney?" Twiss responded, "Whenever one's appointed. Do you want to talk to me or not?" Twiss read Hawkins her *Miranda* warnings again, and Hawkins continued to speak with him.

About ten minutes later, Hawkins again asked, "When do I get an attorney?" Twiss repeated that she would get an attorney when the court would appoint one. Hawkins relayed at this time that she had already submitted paperwork to obtain a court-appointed attorney. Twiss again asked Hawkins if she wanted to continue the interview, and she stated that she did.

B. The Investigation Findings

Authorities ultimately learned that Hawkins socialized on the night of June 6, 2017 at a friend's house. Some of her friends, including Franke, were smoking marijuana. Hawkins claimed she left her girls in the car because they were asleep and she did not want to wake them. Law enforcement discovered that Hawkins left her children in their

car seats from approximately 7:30 p.m. on June 6, 2017 to 12:30 p.m. on June 7, 2017, the next day. After changing one of her daughter's diapers at 8:00 p.m., there is no evidence that Hawkins gave her daughters breaks to stretch or play, or that she fed or hydrated them during this seventeen-hour span. She claimed the windows were down.

Hawkins then admitted that she gave her keys to her friend Franke at 5:00 a.m. the next morning because he wanted to sleep in the car with air conditioning. By her own admission, she went inside and "passed out" at that same time.[4] At some point in the morning, Franke woke up, turned off the vehicle, and left it—with the windows up.[5] The girls were found the next day at about 12:30 p.m. on June 8, 2017 when their mother woke up. They were unconscious. Friends testified that Hawkins tried to revive the girls on her own by putting them in a cold shower. She allegedly delayed calling authorities while she concocted the story about the girls ingesting poisonous plants at the park.

C. Motions to Suppress

Prior to trial, Hawkins filed motions to suppress both the statement at UTHSC police substation and her jail confession. The trial court denied the motions to suppress and issued findings of fact and conclusions of law supporting the same.

D. The Sentencing Hearing

Hawkins ultimately pleaded guilty to all four offenses, preserving for appellate review her motions to suppress. *See* TEX. PENAL CODE ANN. §§ 22.041(e), 22.04(e).

[4] From the record, it appears that the home did not have air conditioning, while the vehicle did.

[5] Franke was also charged in connection with this matter. The details of his criminal charges are not apparent from the record before us.

She elected a bench trial for sentencing.

Dr. Daniel Gebhard, a physician who specializes in pediatric intensive care at University Hospital in San Antonio, Texas, testified at the sentencing hearing. Dr. Gebhard explained that even if the windows had been rolled down with the vehicle off, the temperature inside the vehicle would still have been approximately 105 degrees when the girls were found.[6] He stated that "even with the windows down it's still going to be incredibly hot and an incredibly dangerous situation for children." Dr. Gebhard explained that there are three mechanisms for dispersing heat: convection, conduction, and radiation. Because the girls were strapped into their carseats, they "los[t] the ability to get the convection heat, so getting air to flow around them. And so they . . . warm[ed] up more quickly."

Dr. Gebhard explained that the girls suffered from dehydration, which could lead to organ failure, cell death, seizures and strokes from blood clotting in the brain. These results could cause serious bodily injury or death. He elaborated:

> So, hyperthermia and deaths like this are rather painful. Initially when you're getting overheated, you get—you start sweating quite a bit. That loss of electrolytes and fluid gives you—you start to have p[r]etty severe cramps in your muscles. You have horrific headaches that you can't really control. The—that pain of the heat, you get short of breath really—there's a lot of anxiety with it. And then it can progress to seizures. It—the amount of blood volume in your body goes down, so the—the body's not getting enough oxygen so you start producing lactate in your muscles, that burning feeling that you get, that kind of happens to your whole body.
>
> And particularly in this case, since it was morning into the—or it was morning time and going forward, it was probably a very slow process as

[6] He testified that the temperature inside a vehicle is usually about 15 degrees warmer than the outside temperature with the windows down. Accordingly, with the windows rolled up, the vehicle's temperature would have been about 110 to 115 degrees.

> they started to heat up, that was probably—I've had painful thoughts about thinking about how these children died . . . It seemed like a rather painful death.

During his testimony, Dr. Gebhard also opined that the car was dangerous for other reasons: (1) the older child, B.H., could have gotten out of her car seat and fallen onto the pavement where the car was parked; and (2) the children could have pressed certain buttons in the vehicle that could lead to dangerous conditions. The prosecution also pointed out that Hawkins voluntarily gave her keys to an intoxicated adult male, Franke, at 5:00 a.m., who could have injured the girls by driving away or in another manner.

The trial court made a finding that the vehicle was a "deadly weapon." The trial court sentenced Hawkins in all four second-degree felonies to twenty years and ordered Hawkins to serve the sentences against B.H. first concurrently, and then to serve her sentences for the crimes committed against A.O. In short, Hawkins's sentences were stacked for a total of 40 years. Hawkins filed a motion for new trial, which the trial court denied. Hawkins subsequently filed this appeal.[7]

II. THE MOTIONS TO SUPPRESS

By her first and second issues, Hawkins challenges the denials of her motions to suppress. She claims the first confession, obtained at the UTHSC police substation in San Antonio, "was unwarned and the product of custodial interrogation." In addition, she contends that the second confession, although warned, should have been suppressed

[7] Although Hawkins pleaded guilty to all four charges, she preserved two of her issues in a written pretrial motion to suppress. *See* TEX. R. APP. P. 25.2(a)(2)(A). Further, the trial court certified her right to appeal in all four charges. *See id*. R. 25.2(d).

because (1) it was tainted by the allegedly illegal first confession and (2) her request for an attorney was denied.

A. Standard of Review and Applicable Law

In reviewing the trial court's ruling on a motion to suppress statements made as a result of custodial interrogation, we apply a bifurcated standard of review. *Hernandez v. State*, 533 S.W.3d 472, 478 (Tex. App.—Corpus Christi–Edinburg 2017, pet. ref'd) (citing *Pecina v. State*, 361 S.W.3d 68, 78–79 (Tex. Crim. App. 2012)). We review the ruling and consider the totality of the circumstances, giving total deference to the trial court on questions of historical fact, as well as its application of law to fact questions that turn on credibility and demeanor. *Pecina*, 361 S.W.3d at 79; *Leza v. State*, 351 S.W.3d 344, 349 (Tex. Crim. App. 2011). When a trial court has made explicit findings of fact, we determine "whether the evidence (viewed in the light most favorable to the trial court's ruling) supports these fact findings." *State v. Kelly*, 204 S.W.3d 808, 818 (Tex. Crim. App. 2006). We then review "the trial court's legal ruling *de novo* unless the trial court's supported-by-the-record explicit fact findings are also dispositive of the legal ruling." *Id*.

"In *Miranda v. Arizona*, the Supreme Court crafted safeguards to protect this 'privilege against self-incrimination' in the inherently coercive atmosphere of custodial interrogations." *Pecina*, 361 S.W.3d at 75 (citing *Miranda v. Arizona*, 384 U.S. 436, 441 (1966)). Under *Miranda*, a person must be warned that they have the right to remain silent, that any statement they make may be used as evidence against them, and that they have the right to an attorney prior to any questioning. *Miranda*, 384 U.S. at 444.

Texas Code of Criminal Procedure article 38.22 establishes additional procedural

safeguards to protect against self-incrimination. TEX. CODE CRIM. PROC. ANN. art. 38.22; *see Joseph v. State*, 309 S.W.3d 20, 23 (Tex. Crim. App. 2010). Article 38.22 provides that no oral statement of an accused made as a result of custodial interrogation shall be admissible against the accused in a criminal proceeding unless (1) the statement was recorded and (2) prior to the statement but during the recording, the accused was warned of her rights and knowingly, intelligently, and voluntarily waived those rights. *Joseph*, 309 S.W.3d at 23–24. The warning must inform a defendant of the following:

> (1) [s]he has the right to remain silent and not make any statement at all and that any statement [s]he makes may be used against h[er] at h[er] trial;
>
> (2) any statement [s]he makes may be used as evidence against h[er] in court;
>
> (3) [s]he has the right to have a lawyer present to advise h[er] prior to and during any questioning;
>
> (4) if [s]he is unable to employ a lawyer, [s]he has the right to have a lawyer appointed to advise h[er] prior to and during any questioning; and
>
> (5) [s]he has the right to terminate the interview at any time[.]

TEX. CODE CRIM. PROC. ANN. art. 38.22, § 2(a).

"A person is in 'custody' only if, under the circumstances, a reasonable person would believe that his freedom of movement was restrained to the degree associated with a formal arrest." *Dowthitt v. State*, 931 S.W.2d 244, 254 (Tex. Crim. App. 1996) (citing *Stansbury v. California,* 511 U.S. 318, 321 (1994)). Texas law recognizes four general situations which may constitute custody: (1) when the suspect is physically deprived of his freedom of action in any significant way, (2) when a law enforcement officer tells the

suspect that he cannot leave, (3) when law enforcement officers create a situation that would lead a reasonable person to believe that his freedom of movement has been significantly restricted, and (4) when there is probable cause to arrest and law enforcement officers do not tell the suspect that he is free to leave. *Id*. Voluntary, non-custodial oral statements are admissible against an accused without *Miranda* or article 38.22 warnings. *See Espinoza v. State*, 185 S.W.3d 1, 3 (Tex. App.—San Antonio 2005, no pet.).

B. The First Interview at the Hospital Police Station

The facts reveal that Hawkins was given a courtesy ride to the UTHSC police substation by a Bexar County Sheriff's deputy assigned to the hospital because Hawkins was unfamiliar with San Antonio. She was not handcuffed. Investigator Arredondo testified that Hawkins "was not in custody" and "not under arrest" at this time: the purpose of the interview was to gather more information about how and why the girls were in such grave condition.

Arredondo testified that his decision to record Hawkins's interview was made pursuant to the Kerr County Sheriff's policy to record all statements—whether they be made by witnesses or possible suspects. Arredondo asked Hawkins if she needed to use the restroom and gave her a bottle of water. Although the room was small and had no windows, the door to enter and exit the interview room was unlocked and Hawkins never asked to leave. Hawkins gave authorities permission to search her phone and vehicle, and surrendered her phone password and car keys to assist with these matters. She was never Mirandized or given the 38.22 warnings. When she returned to University

Hospital to be with her surviving daughter, authorities did not guard or follow her.

Under the totality of these circumstances, we conclude as a matter of law that Hawkins was not in custody when she gave her statement at the UTHSC police substation. *See Dowthitt*, 931 S.W.2d at 255. A reasonable person would not believe that her freedom of movement was restrained to the degree associated with a formal arrest in light of these particular facts. *See id.* at 254; *Stansbury*, 511 U.S. at 321. Her voluntary, non-custodial oral statements were thus admissible without any *Miranda* or article 38.22 warnings. *See Espinoza*, 185 S.W.3d at 3.

C. The Second Interview at Kerr County Jail

Hawkins further argues the trial court should have suppressed the statement at the Kerr County Police Station because it was tainted by her hospital statement. She also argues that her unequivocal invocation to her right to counsel was ignored.

1. The Alleged Tainting

Hawkins argues that her statements made in jail were "tainted" by her first illegal confession. In *Bell v. State*, the Texas Court of Criminal Appeals held that it would utilize the four-part test established in *Brown v. Illinois*, 422 U.S. 590 (1975), to determine whether a confession had been first tainted by an illegal arrest. 724 S.W.2d 780, 787 (Tex. Crim. App. 1986). The *Brown* factors include:

(1) Whether *Miranda* warnings were given;

(2) The temporal proximity of the alleged illegal conduct and the confession;

(3) The presence of intervening circumstances; and

(4) The purpose and flagrancy of the official misconduct.

Brown, 422 U.S. at 603-04. However, in light of our holding that Hawkins's statements at the UTHSC police substation were not the product of an illegal custodial interrogation, we find this argument meritless. The first statement was made voluntarily under non-custodial circumstances, thus, it could not have unlawfully "tainted" Hawkins's jail statements. *See Bell*, 724 S.W.2d at 787.

2. The Invocation of Hawkins's Request for an Attorney

Hawkins also argues that her statements in jail should be suppressed because she invoked her right to counsel. "To trigger law enforcement's duty to terminate the interrogation, a suspect's request for counsel must be clear, and the police are not required to attempt to clarify ambiguous remarks." *Davis v. United States*, 512 U.S. 452, 461-62 (1994); *Davis v. State*, 313 S.W.3d 317, 339 (Tex. Crim. App. 2010). "Whether a statement referring to a lawyer constitutes a clear request for counsel depends on the statement itself and the totality of the circumstances surrounding the statement." *Davis*, 313 S.W.3d at 339. "We look to the totality of circumstances to determine whether any statement referencing counsel was really a clear invocation of the Fifth Amendment right; we do not look to the totality of the circumstances, however, to determine in retrospect whether the suspect really meant it when he unequivocally invoked his right to counsel." *Gobert v. State*, 275 S.W.3d 888, 893 (Tex. Crim. App. 2009). "The test is objective: whether the defendant articulated his desire to have counsel present sufficiently clearly that a reasonable police officer in the circumstances would understand the statement to be a request for an attorney." *Id.; see also Alcala v. State*, No. 13-12-00259-CR, 2014 WL 3731733, at *14 (Tex. App.—Corpus Christi–Edinburg July 24, 2014,

pet. ref'd) (mem. op., not designated for publication).

Once an accused has invoked her right to counsel, authorities must cease the interrogation until counsel arrives, unless the accused herself initiates any further communication. *Muniz v. State*, 851 S.W.2d 238, 252 (Tex. Crim. App. 1993) (citing *Edwards v. Arizona*, 451 U.S. 477 (1981)). Subsequent statements by a suspect may be used to show that she either initiated the conversation or affirmatively waived the rights she had previously invoked under *Edwards*. *See id*. To establish a waiver, the State must demonstrate that the accused intentionally relinquished a right of which she was aware. *See id.* (citing *Johnson v. Zerbst,* 304 U.S. 458, 464 (1938)). "Whether a waiver is shown 'must depend, in each case, upon the particular facts and circumstances surrounding the case, including the background, experience, and conduct of the accused.'" *Id.* (quoting *Johnson*, 304 U.S. at 464).

Before the interview began, Captain Twiss read Hawkins her *Miranda* rights and warnings from the Texas Code of Criminal Procedure 38.22. Hawkins initialed each right and signed a document indicating she understood these rights. During her discussion with Twiss, Hawkins first asked, "When can I get an attorney?" Twiss responded, "Whenever one's appointed. Do you want to talk to me or not?" Twiss then re-read Hawkins her *Miranda* rights, and Hawkins continued to speak with him. Hawkins, ten minutes later, then asked, "When do I get an attorney?" Twiss repeated that she would get an attorney when the court had appointed one. Twiss again asked Hawkins if she wanted to continue the interview, and she answered in the affirmative.

From the record, we conclude that Hawkins did not unequivocally demand an

attorney. Instead, her questions focused on when she would be appointed an attorney. Under these "particular facts and circumstances," Hawkins relinquished her right to an attorney. *See id.* We overrule issues one and two concerning Hawkins's motion to suppress.

III. THE "DEADLY WEAPON" FINDING

By her third issue, Hawkins claims the trial court erred when it made the finding that her vehicle was "a deadly weapon." She argues that her co-defendant, Franke, caused the vehicle to become a deadly weapon because he was the one who rolled up the windows and turned off the car engine while her children were in the vehicle, not her. She contends that "but for the reckless actions of Mr. Franke, the vehicle would not have become a deadly weapon."

A. Standard of Review and Applicable Law

Section 1.07(17) of the Texas Penal Code defines a "deadly weapon" as:

> (A) a firearm or anything manifestly designed, made, or adapted for the purpose of inflicting death or serious bodily injury; or
>
> (B) anything that in the manner of its use or intended use is capable of causing death or serious bodily injury.

TEX. PENAL CODE ANN. § 1.07(17). "Serious bodily injury" is a "bodily injury that creates a substantial risk of death or that causes death, serious permanent disfigurement, or protracted loss or impairment of the function of any bodily member or organ." *Id*. § 1.07(46).

To sustain a deadly-weapon finding, the evidence must show: (1) the object meets the definition of a deadly weapon; (2) the deadly weapon was used or exhibited during

the transaction on which the felony conviction was based; and (3) other people were put in actual danger. *Brister v. State*, 449 S.W.3d 490, 494 (Tex. Crim. App. 2014); *see also Timmons v. State*, No. 13-15-00505-CR, 2017 WL 1549226, at *2 (Tex. App.—Corpus Christi–Edinburg Apr. 27, 2017, no pet.) (mem. op., not designated for publication). Additionally, "[o]bjects that are not usually considered dangerous weapons may become so, depending on the manner in which they are used during the commission of an offense," and a "motor vehicle may become a deadly weapon if the manner of its use is capable of causing death or serious bodily injury." *Drichas v. State*, 175 S.W.3d 795, 798 (Tex. Crim. App. 2005). A reviewing court must view the evidence in the light most favorable to the prosecution to determine whether any rational trier of fact could have found beyond a reasonable doubt that the defendant used or exhibited a deadly weapon during the commission of the offense. *See Blackman v. State*, 350 S.W.3d 588, 595 (Tex. Crim. App. 2011).

B. Analysis

The evidence shows that Hawkins left her children in their car seats from approximately 7:30 p.m. on June 6, 2017 to 12:30 p.m. on June 7, 2017, the next day. After changing one of her daughter's diapers at 8:00 p.m., there is no evidence that Hawkins gave her daughters breaks to stretch or play, or that she fed or gave them any hydration during this fifteen-hour span. She, by her own admission, "passed out" at about 5:00 a.m. and went inside to sleep inside her friend's home, leaving her girls in the car.

When Hawkins woke up and finally checked on her daughters, it was already

ninety degrees outside and the car was exposed to direct sunlight. Dr. Gebhard testified that even if the windows had been rolled down with the vehicle off, the temperature inside the vehicle would still have been approximately 105 degrees. He stated that "even with the windows down it's still going to be incredibly hot and an incredibly dangerous situation for children." Dr. Gephard explained that dehydration could lead to organ failure, cell death, seizures and strokes from blood clotting in the brain, which could case serious bodily injury or death.

We also note that Hawkins gave her keys to an intoxicated male adult, Franke, to sleep in the same car as her toddler-aged daughters. Franke could have somehow injured the girls in his state of intoxication or could have driven the vehicle away, causing a potential accident. Dr. Gebhard also testified that the children could have gotten out of their carseats and fallen onto the pavement where the car was parked or could have pressed certain buttons in the vehicle that could lead to dangerous results.

Thus, even though Hawkins's co-defendant Franke was the person "who rolled up the windows and turned off the car engine while her children were in the vehicle," the evidence still shows that the manner in which Hawkins used the vehicle caused her children serious bodily injury and death. The evidence establishes that (1) the vehicle meets the definition of a deadly weapon; (2) it was used during the transaction upon which Hawkins's felony conviction was based; and (3) B.H. and A.O. were put in actual danger. *Brister*, 449 S.W.3d at 494. We overrule this issue.

IV. The Order to Serve Consecutive Sentences

By her fourth issue, Hawkins asserts that the stacking of her sentences violates

the "constitutional prohibition against double jeopardy" because it "impose[s] multiple punishments for the same crime and single criminal episode."

A. Standard of Review and Applicable Law

The Double Jeopardy Clause of the United States Constitution provides that no person shall "be subject for the same offense to be twice put in jeopardy of life or limb." U.S. CONST. amend. V; *Phillips v. State*, 787 S.W.2d 391, 393 (Tex. Crim. App. 1990). This constitutional guarantee is applicable to the states through the Due Process Clause of the Fourteenth Amendment. U.S. CONST. amend. XIV; *Ex parte Peterson*, 738 S.W.2d 688, 689 (Tex. Crim. App. 1987) (citing *Benton v. Maryland,* 395 U.S. 784 (1969)).

"Both the United States and Texas Constitutional provisions speak of double jeopardy in terms of the 'same offense' rather than 'same transaction.'" *Phillips*, 787 S.W.2d at 393 (citing *Spradling v. State,* 773 S.W.2d 553 (Tex. Crim. App. 1989); *Ex parte McWilliams,* 634 S.W.2d 815 (Tex. Crim. App. 1982)). The Texas Court of Criminal Appeals has held that "the protection against double jeopardy is inapplicable where separate and distinct offenses occur during the same transaction." *Id.*

B. Analysis

Here, Hawkins complains that her offenses are the same, thus they should not be stacked. The trial court cause numbers for crimes against B.H. were A17597 (abandoning or endangering a child with imminent bodily injury) and A17599 (injury to a child). The cause numbers for the crimes against A.O. were A17598 (injury to a child) and A17600 (abandoning or endangering a child with imminent bodily injury). The judgments set forth that "Cause Nos. A17597 and A17599 will run consecutively with Cause Nos. A17598

and A17598 and A17600 and run concurrently with each other. A17597 and A17599 will run first." In other words, the court ordered Hawkins to first serve her sentences for the crimes she committed against B.H., and then to serve her sentences for the crimes committed against A.O.

While the crimes occurred at the same time, they are separate offenses because they occurred against two separate individuals—Hawkins's young daughters A.O. and B.H. Because "the protection against double jeopardy is inapplicable where separate and distinct offenses occur during the same transaction," Hawkins's argument fails. *Phillips*, 787 S.W.2d at 393. We overrule this issue.

V. CONCLUSION

We affirm the trial court's judgment in all cause numbers.

LETICIA HINOJOSA
Justice

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

Delivered and filed the
9th day of January, 2020.