Affirmed and Memorandum Opinion filed January 7, 2010.

In The

Fourteenth Court of Appeals

NO. 14-08-01058-CR

ALEXIS RENE OBREAGON, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the 178th District Court
Harris County, Texas
Trial Court Cause No. 1130245

MEMORANDUM OPINION

Appellant, Alexis Rene Obreagon, appeals his conviction for aggravated kidnapping. In a single issue, appellant challenges the legal and factual sufficiency of the evidence to support his conviction. We affirm.

I. Background

On August 23, 2007, the complainant left the Metropolis Club at approximately 2:00 a.m. She spoke with someone in the parking lot for a few minutes and drove to her apartment complex, which was four or five blocks from the club. As she entered the gated complex, she noticed that the security guard was absent. She used her key card to open the gate and observed a car follow her into the parking lot without using a key card. She watched the following car until she saw the car drive a different direction from her apartment. Thinking that the car was no longer following her, the complainant parked her car, stepped out of the car, and was closing the door when appellant's co-defendant, Hector Montiel, placed a gun to her head and forced her into the back seat of the car. Appellant was driving the car. Montiel held her face down in the back seat while they drove away from the apartment complex.

As they drove away, the complainant realized she still had her cellular telephone. She used the phone to dial 911, but was unable to tell the 911 operator where she was or where she was being taken. Montiel realized that she used her cell phone and told appellant she had phoned the police. Montiel gave the cell phone to appellant who threw the phone out of the window. Montiel told the complainant to cooperate with them and that they were "going to go one by one." At that moment, she realized they planned to sexually assault her. The car stopped and appellant told the complainant to take off her blouse, which she did. Montiel grabbed her legs and appellant began driving again. Montiel gave the gun he used to subdue the complaint to appellant who placed it under the front seat. They were eventually stopped by a West University Police Officer to whom the complainant told what had happened.

On cross-examination, the complainant testified that appellant directed where they went and was giving instructions to Montiel. She also contradicted her previous testimony and stated that appellant, not Montiel, had told her they would be "going one by one."

Larry Toma, the West University Police Officer who stopped appellant's car, testified that he observed a small car make a sharp left turn off of Buffalo Speedway without using a turn signal. He followed the car and observed several traffic violations, then saw the car park on the side of the road for a short time. When the car started driving again, Officer Toma radioed for back-up and turned on his emergency lights to stop the car. When he approached the car, he saw a man and woman in the back seat and another man driving. The woman was hysterical, afraid, and yelling, "Help me, help me." She was holding her clothes against her chest. The woman reported to Officer Toma that the men were going to sexually assault her. He looked in the car and saw the gun in plain view.

Appellant testified that as he and Montiel were driving past the Metropolis Club, they saw the complainant, and Montiel told appellant to turn around and park in the club parking lot. When the complainant left the club, Montiel told appellant to follow her. Appellant testified that Montiel threw the phone out of the car. He further testified that when the police officer stopped the vehicle, Montiel threw the gun at him and he picked it up and put it under the seat. Appellant denied saying anything to the complainant and said he went along with the kidnapping because he felt threatened by Montiel.

Appellant was convicted of aggravated kidnapping and sentenced to 60 years in prison.

II. Legal and Factual Sufficiency

In a single issue, appellant challenges the legal and factual sufficiency of the evidence to support his conviction. In reviewing a legal sufficiency challenge, we view the evidence in the light most favorable to the verdict and determine whether a rational trier of fact could have found the essential elements of a crime beyond a reasonable doubt. *Salinas v. State*, 163 S.W.3d 734, 737 (Tex. Crim. App. 2005). The jury, as the trier of fact, is the sole judge of the credibility of the witnesses and of the strength of the evidence. *Fuentes v. State*, 991 S.W.2d 267, 271 (Tex. Crim. App. 1999). The jury may choose to believe or disbelieve any portion of the testimony. *Sharp v. State*, 707 S.W.2d 611, 614

(Tex. Crim. App. 1986). When faced with conflicting evidence, we presume the trier of fact resolved conflicts in favor of the prevailing party. *Turro v. State*, 867 S.W.2d 43, 47 (Tex. Crim. App. 1993).

In evaluating the factual sufficiency of the evidence, we view all the evidence in a neutral light and will set aside the verdict only if we are able to say, with some objective basis in the record, that the conviction is clearly wrong or manifestly unjust because the great weight and preponderance of the evidence contradicts the jury's verdict. *Watson v. State*, 204 S.W.3d 404, 417 (Tex. Crim. App. 2006). We do not intrude upon the fact-finder's role as the sole judge of the weight and credibility of witness testimony. *See id.* at 417; *Fuentes*, 991 S.W.2d at 271.

A person commits aggravated kidnapping if he intentionally or knowingly abducts another person with the intent to violate or abuse the victim sexually or uses or exhibits a deadly weapon during the commission of the offense. Tex. Penal Code Ann. § 20.04 (Vernon 2003). Appellant contends there is legally and factually insufficient evidence to support his conviction because the State failed to prove that he had the intent to kidnap the complainant.

III. Criminal Responsibility as a Party

The jury was instructed on the law of parties under Texas Penal Code section 7.02(a)(2). Under section 7.02(a)(2), a person is criminally responsible for the conduct of another if, "acting with the intent to promote or assist the commission of the offense, he solicits, encourages, directs, aids, or attempts to aid the other person to commit the offense." Tex. Penal Code Ann. § 7.02(a)(2). Evidence is sufficient to convict under the law of parties where the accused is physically present at the commission of the offense and encourages its commission by words or other agreement. *Ransom v. State*, 920 S.W.2d 288, 302 (Tex. Crim. App. 1994). In determining whether an accused participated as a party, the fact-finder may examine the events occurring before, during, and after the commission of the offense and may rely on actions of the accused that show an

understanding and common design to commit the offense. *Id.* Though mere presence does not automatically make one a party to a crime, it is a circumstance tending to prove party status and, when considered with other facts, may be sufficient to prove that the defendant was a participant. *Davis v. State*, 195 S.W.3d 311, 320 (Tex. App.—Houston [14th Dist.] 2006, no pet.). The jury may rely on circumstantial evidence and may infer intent from appellant's acts, words, or conduct. *See Powell v. State*, 194 S.W.3d 503, 506 (Tex. Crim. App. 2006); *Ransom*, 920 S.W.2d at 302.

Appellant contends he was merely the driver and was performing a favor for Montiel in driving him where Montiel directed him. The complainant testified, however, that appellant threw her cell phone out of the window, instructed Montiel on where they were going, and told the complainant to remove her clothes. Appellant admitted that he knew the back doors to the car were locked and that he hid the gun under the seat before the police officer arrived. Viewing the evidence in the light most favorable to the verdict, a reasonable jury could have found appellant's actions were sufficient to support a conviction as a party for aggravated kidnapping. Further, viewing the evidence in a neutral light, the evidence supporting the conviction is not so weak that the jury's determination is clearly wrong and manifestly unjust, nor does the conflicting evidence so greatly outweigh the evidence supporting the conviction that the jury's determination is manifestly unjust.

IV. Duress

Appellant further challenges the jury's rejection of his duress defense. Duress is an affirmative defense requiring the defendant to prove by a preponderance of the evidence that he committed the offense "because he was compelled to do so by threat of imminent death or serious bodily injury to himself or another." Tex. Penal Code Ann. §§ 2.04(d) (Vernon 2003), 8.05(a) (Vernon 2003); *Edwards v. State*, 106 S.W.3d 833, 843 (Tex. App.—Dallas 2003, pet. ref'd). To establish compulsion, a defendant must prove that "the force or threat of force rendered a person of reasonable firmness incapable of resisting

the pressure." Tex. Penal Code Ann. § 8.05(c); *Edwards*, 106 S.W.3d at 843. When courts of appeals are called upon to examine whether a defendant proved his affirmative defense or other fact issue where the law has designated that the defendant has the burden of proof by a preponderance of evidence, the correct standard of review is whether after considering all the evidence relevant to the issue at hand, the judgment is so against the great weight and preponderance of the evidence so as to be manifestly unjust. *Meraz v. State*, 785 S.W.2d 146, 154 (Tex. Crim. App. 1990). We will find the evidence factually sufficient to support the rejection of a claim of duress where the evidence shows that the defendant intentionally, knowingly, or recklessly placed himself in a situation in which it was probable that he would be subjected to compulsion. *See* Tex. Penal Code Ann. § 8.05(d).

Viewing the evidence under the appropriate standard, we cannot conclude the overwhelming weight of the evidence supports appellant's claim of duress. Other than Montiel carrying a gun, nothing in the record supports appellant's claim that he was compelled to act because he felt threatened. The record reflects that appellant voluntarily drove the car, followed the complainant to her apartment complex, threw the complainant's phone out of the car, drove across town, demanded that the complainant remove her clothes, and attempted to hide the gun before the police arrived. Accordingly, the evidence supports the jury's rejection of appellant's duress defense.

Appellant's sole issue is overruled and the judgment of the trial court is affirmed.

PER CURIAM

Panel consists of Justices Yates, Seymore, and Brown.
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