Opinion filed October 7, 2021

In The

Eleventh Court of Appeals

No. 11-19-00345-CR

GARY DEAN CAMPBELL, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the 385th District Court
Midland County, Texas
Trial Court Cause No. CR48730

M E M O R A N D U M O P I N I O N

Appellant, Gary Dean Campbell, was charged by indictment, and later by reindictment, with two counts of securing execution of a document by deception in an amount greater than $30,000 and less than $150,000 and one count of forgery of a contract. The jury found Appellant guilty on all counts. As to Counts I and II—securing execution of a document by deception—the jury assessed Appellant's punishment, on both counts, at imprisonment for ten years in the Institutional Division of the Texas Department of Criminal Justice and a $10,000 fine. *See* TEX.

PENAL CODE ANN. § 32.46–(a)(1), (b)(5) (West 2016). As to Count III—forgery of a contract—the jury assessed Appellant's punishment at confinement for two years in the State Jail Division of the Texas Department of Criminal Justice and a $10,000 fine. *See id.* § 32.21(b), (d) (West Supp. 2020). The trial court sentenced Appellant accordingly and ordered that Appellant's sentences run concurrently.

In two issues on appeal, Appellant challenges the sufficiency of the evidence to support his convictions under Counts I and II for securing execution of a document by deception. He does not challenge his conviction for forgery of a contract as charged in Count III. We affirm in part and reverse in part.

I. *Factual Background*

In August of 2015, Appellant moved to Texas from Pennsylvania, where he worked in the oil and gas industry. Appellant quickly began to devise a project for an oil and gas venture in the Permian Basin.

Emanuel Hartman, who worked for Chevron at the time and did not want to relocate to Houston, was the first to join Appellant's project. Hartman and Appellant executed a joint venture agreement on December 31, 2015. According to the agreement, Hartman, through Red Wolf, LLC, and Appellant, through West-Tex Development, LLC, were equal owners in the venture. The joint venture agreement also referenced a separate master services agreement (MSA), dated December 3, 2015, between Blackstone Mineral Group and Appellant's company, West-Tex Development, LLC. The MSA provided in relevant part:

> This Master Land Services Contract . . . is made and entered into effective this day of December 3, 2015, between Blackstone Minerals, LLC, Sierra Mineral Development IV, LLC, Rising Star Energy, LP, whose address is 984 Echo Lane, Houston, Texas, 77024, collectively Blackstone Mineral Group, . . . and West-Tex Development, LLC . . . .

On the MSA's signature page, John Eads executed the MSA on behalf of Blackstone Mineral Group, and Appellant executed it on behalf of West-Tex Development, LLC.

Hartman testified that the only information Appellant provided about the project's "client" was that the MSA "was going to pay for the work."

In January of 2016, Hayden Snyder lost his job with Novus Land Services and reached out to Appellant for work. Previously, Snyder and Appellant had both worked for Novus as contract landmen. Appellant had told Snyder about the "connections that [Appellant] had in the business," including a connection to a "Mr. Fabris," and about an upcoming project. Snyder met with Appellant to discuss the project, which involved conducting title research for a "client" that Appellant had purportedly secured. During the meeting, they discussed the terms of the joint venture agreement that was initially negotiated between Appellant and Hartman; the document was thereafter redrafted to include Snyder. Pursuant to the revised agreement, Appellant and Hartman would remain equal owners in the venture, and Snyder would hold a 12.5% revenue interest. Shortly after the meeting, Appellant called Snyder about securing funding for the initial expenses of setting up the business. Snyder explained that he required more certainty that the project had "backing and substance"; in response, Appellant gave Snyder the MSA.

Snyder testified that the MSA gave him assurance that there "was legitimacy to [Appellant's] claim that there was a client backing the project that he had started." Hartman, who had not seen the MSA prior to the drafting of the initial joint venture agreement, testified that he researched the name "John Eads" and determined that Eads was one of the "owners or managers" of Sierra Resources, LLC. Thus, when Hartman signed the agreement, he was under the impression that Sierra Resources was the "client." As a result of the MSA, the joint venture agreement that included Snyder was executed on January 15, 2016. Snyder then reached out to his mother, Ellen Perry, for the funding that the venture needed.

Perry was already aware of the nascent project from conversations she had with Snyder. Perry testified that, with respect to funding, Snyder contacted her

initially about obtaining a $50,000 loan that the venture needed to establish and equip a land office. On January 18, 2016, Snyder e-mailed Perry a copy of the MSA and a copy of a promissory note that Snyder had drafted from an online template; the promissory note had been signed by Appellant. Because Perry lived in New Mexico, she was not present when Appellant signed the promissory note. Nevertheless, Hartman met Perry at a bank in Albuquerque to provide the necessary account information for Perry to wire the funds for the joint venture. The promissory note was dated January 17, 2016, and its terms reflected an agreement between West-Tex Red Wolf Joint Venture (by Appellant as Venture Co-Manager) and Perry Resources, LLC (by Ellen S. Perry). The promissory note provided that repayment would be made "to the order of Perry Resources, LLC." Perry thereafter signed the promissory note and wired $50,000 to the account provided by Hartman.

In February of 2016, Perry met with Snyder and Hartman while she was in Midland. Snyder and Hartman requested a second $50,000 loan to open a second office in Big Spring. Perry agreed to fund another loan in that amount, and she testified that she relied on Snyder's and Hartman's statements about the project when she made the wire transfer for the second $50,000 loan. The second promissory note was dated February 11, 2016, and, like the first promissory note, designated Appellant as the borrower; however, the lender information and payee identification and instructions were incomplete and left blank. In fact, Perry never signed the February 11 promissory note.

According to Snyder, issues with the joint venture became evident soon after Perry made the second $50,000 wire transfer. Snyder testified that contractors were not being paid and that there did not appear to be an actual client backing the venture. William Prior, one of the contractors on the project, testified that he approached Appellant regarding unpaid work invoices. In a text message exchange with Prior, Appellant revealed "that he had made some bad decisions" and "that he had falsified

a document." Eventually, Snyder reached out to Kenny Gunter, who contacted Robert Fabris at Sierra Resources, LLC about the MSA that Snyder had sent him.

Fabris was the executive vice president for land and business development for Sierra Resources. Fabris testified that Appellant had contacted him in February of 2016 "about a project in the Midland basin that [Appellant] was putting together." Appellant told Fabris that the project needed "an operator, and that [Appellant] thought it might be something Sierra might be interested in." Fabris agreed to meet with Appellant in mid-February about the project. At the February 18 meeting, Appellant told Fabris that he had "160 plus landmen working on the project at the time, roughly 10 attorneys running title, preparing title opinions," that covered several different counties in the "Midland basin." Fabris testified that Sierra Resources "did not execute any contracts," including any master land services agreements, during or after his meeting with Appellant. Rather, Fabris requested additional information from Appellant concerning the project so that the company could evaluate the project and determine if Sierra Resources wanted to participate in it. Through mid-April, Fabris continued to communicate with Appellant regarding the request for additional information, which Appellant never provided.

On April 13, 2016, Fabris received a phone call from Gunter regarding Appellant and a contract with Sierra Resources. Gunter e-mailed Fabris a copy of Appellant's MSA, which listed a "Sierra Mineral Development IV, LLC," an address on Echo Lane in Houston, and John Eads on the signature page as the general partner of "Blackstone Mineral Group." Fabris had never seen that document before he received it from Gunter. He testified that Sierra Mineral Development IV was never an entity of Sierra Resources and that the signature on the MSA was not Eads's signature. Fabris additionally pointed out that, although he was not familiar with the entity "Blackstone Minerals, LLC" that was listed on Appellant's MSA, the company "Black Stone Minerals" was a substantial mineral owner from Houston.

Sierra Resources had never done business with Black Stone Minerals; however, Sierra Resources had done business with Rising Star Energy, LP in the early 2000s, during the time that Appellant had worked for Sierra Resources. Fabris also noted that the Houston address—"984 Echo Lane"—that the MSA provided for Rising Star Energy was similar to Sierra Resources' prior address, 952 Echo Lane.

Eads, the chief executive officer for Sierra Resources, testified that he never met with Appellant to sign any contract with Appellant in 2015; that the signature on Appellant's MSA was not his signature; and that he had no affiliation with "Blackstone Mineral Group." Eads's son, John Carr Eads, the president and chief financial officer of Sierra Resources, also testified that he did not sign Appellant's MSA.

Appellant represented himself at trial and elected to testify in his own defense. In essence, he testified that he had a viable project that ultimately "went south" because contractors and invoices were not getting paid. Appellant testified that they were not able to sustain what he thought they were going to receive from investors and that he approached Fabris about the project in an attempt "to go through and still bring in more clients." Regarding the MSA, Appellant testified that he "[had] no clue" whether "the Blackstone agreement [was] forged." He noted the similarities between the entities listed and the previous address for Sierra Resources, but Appellant did not know "who did it," "why it was done," or whether those errors were intentional or not. Appellant further testified that he executed the January 2016 promissory note for Perry's loan in his capacity as co-manager of the joint venture.

On Counts I and II, the jury found Appellant guilty of securing execution of a document by deception with respect to Perry's January 18 promissory note and the February 11 promissory note, respectively. In his first issue, Appellant asserts that the evidence was insufficient to support his conviction under Count I because the State failed to prove that Appellant intended to defraud Perry. In his second issue,

Appellant contends that the evidence was insufficient to support his conviction under Count II (1) because the State failed to prove Appellant's intent to defraud Perry and (2) because Perry did not sign or execute the February 11 promissory note.

II. *Standard of Review*

We review a challenge to the sufficiency of the evidence under the standard of review set forth in *Jackson v. Virginia*, 443 U.S. 307 (1979). *Brooks v. State*, 323 S.W.3d 893, 912 (Tex. Crim. App. 2010); *Polk v. State*, 337 S.W.3d 286, 288–89 (Tex. App.—Eastland 2010, pet. ref'd). Under the *Jackson* standard, we review all of the evidence in the light most favorable to the verdict and determine whether any rational trier of fact could have found the essential elements of the charged offense beyond a reasonable doubt. *Jackson*, 443 U.S. at 319; *Isassi v. State*, 330 S.W.3d 633, 638 (Tex. Crim. App. 2010).

When conducting a sufficiency review, we consider all of the evidence admitted at trial, including evidence that may have been improperly admitted. *Winfrey v. State*, 393 S.W.3d 763, 767 (Tex. Crim. App. 2013); *Clayton v. State*, 235 S.W.3d 772, 778 (Tex. Crim. App. 2007). We defer to the factfinder's role as the sole judge of the witnesses' credibility and the weight their testimony is to be afforded. *Brooks*, 323 S.W.3d at 899. We may not reevaluate the weight and credibility of the evidence to substitute our judgment for that of the factfinder. *Dewberry v. State*, 4 S.W.3d 735, 740 (Tex. Crim. App. 1999). Therefore, if the record supports conflicting inferences, we presume that the factfinder resolved the conflicts in favor of the verdict, and we defer to that determination. *Jackson*, 443 U.S. at 326; *Merritt v. State*, 368 S.W.3d 516, 525–26 (Tex. Crim. App. 2012); *Clayton*, 235 S.W.3d at 778.

Further, we treat direct and circumstantial evidence equally under this standard. *Isassi*, 330 S.W.3d at 638; *Clayton*, 235 S.W.3d at 778; *Hooper v. State*, 214 S.W.3d 9, 13 (Tex. Crim. App. 2007). It is not necessary that the evidence

directly prove the defendant's guilt; circumstantial evidence is as probative as direct evidence in establishing a defendant's guilt, and circumstantial evidence can alone be sufficient to establish guilt. *Carrizales v. State*, 414 S.W.3d 737, 742 (Tex. Crim. App. 2013) (citing *Hooper*, 214 S.W.3d at 13). Therefore, in evaluating the sufficiency of the evidence, we must consider the cumulative force of all the evidence. *Villa v. State*, 514 S.W.3d 227, 232 (Tex. Crim. App. 2017); *Murray v. State*, 457 S.W.3d 446, 448 (Tex. Crim. App. 2015). Each fact need not point directly and independently to the defendant's guilt if the cumulative force of all incriminating circumstances is sufficient to support the conviction. *Hooper*, 214 S.W.3d at 13.

Finally, we measure the sufficiency of the evidence by the elements of the offense as defined by the hypothetically correct jury charge for the case. *Morgan v. State*, 501 S.W.3d 84, 89 (Tex. Crim. App. 2016); *see also Malik v. State*, 953 S.W.2d 234, 240 (Tex. Crim. App. 1997). The hypothetically correct jury charge "accurately sets out the law, is authorized by the indictment, does not unnecessarily increase the State's burden of proof or unnecessarily restrict the State's theories of liability, and adequately describes the particular offense for which the defendant was tried." *Malik*, 953 S.W.2d at 240.

III. *Analysis*

In relevant part, a person commits the offense of securing execution of a document by deception "if, with intent to defraud or harm any person, he, by deception . . . causes another to sign or execute any document affecting property or service or the pecuniary interest of any person." PENAL § 32.46(a)(1). A person acts "with intent" regarding the nature of his conduct or a result of his conduct "when it is his conscious objective or desire to engage in the conduct or cause the result. *Id.* § 6.03(a) (West 2021). Finally, a person can use "deception" by "creating or confirming by words or conduct a false impression of law or fact that is likely to affect the judgment of another in the transaction, and that the actor does not believe

to be true" or by "failing to correct a false impression of law or fact that is likely to affect the judgment of another in the transaction, that the actor previously created or confirmed by words or conduct, and that the actor does not now believe to be true." *Id.* § 31.01(1)(A)–(B).

A. *Count I*

In his first issue, Appellant challenges the sufficiency of the evidence to support his conviction under Count I for securing the execution of the January 18 promissory note by Perry. Specifically, Appellant contends that the State failed to prove that Appellant intended to defraud or harm Perry. We cannot agree.

A person's intent can be inferred from his acts, words, and conduct. *Goldstein v. State*, 803 S.W.2d 777, 791 (Tex. App.—Dallas 1991, pet. ref'd). Whether Appellant had the "intent to defraud or harm" Perry is a question of fact to be determined from all the facts and circumstances. *Id.* (citing *Willbur v. State*, 729 S.W.2d 359, 361 (Tex. App.—Beaumont 1987, no pet.)); *see* PENAL § 32.46(a)(1). Here, the State adduced evidence that Appellant presented Snyder with a master land services contract, which purported to include Sierra Resources, LLC and the signature of its CEO, John Eads. Snyder testified that the entities listed on the agreement indicated to him (1) that there was a legitimate client backing Appellant's project and (2) that he entered into the joint venture agreement and subsequently asked Perry for funding based on the statements that Appellant had made about his relationship with Fabris and Sierra Resources. The State proffered the January 2016 promissory note, which established that Perry entered into an agreement with Appellant to loan money to the venture. Perry testified that she relied on the propriety of the MSA when she was induced to execute the January 2016 promissory note and thereafter transfer $50,000 to the West-Tex Red Wolf Joint Venture.

The jury is authorized to believe all, some, or none of any witness's testimony. *Adelman v. State*, 828 S.W.2d 418, 421 (Tex. Crim. App. 1992); *Reyes v. State*, 465

S.W.3d 801, 805 (Tex. App.—Eastland 2015, pet. ref'd). Although Appellant maintained that he had "no clue" whether the MSA that he presented to Snyder was forged, it is the jury's duty to resolve conflicts in the testimony, to weigh the evidence, to assess witness credibility, and to draw reasonable inferences from basic facts to ultimate facts. *See Jackson*, 443 U.S. at 326; *Merritt*, 368 S.W.3d at 525–26; *Clayton*, 235 S.W.3d at 778. It is not our role or function to engage in or make credibility determinations. *See Jackson*, 443 U.S. at 326; *Winfrey*, 393 S.W.3d at 768; *Brooks*, 323 S.W.3d 899; *Clayton*, 235 S.W.3d at 778. When, as in this case, the evidence in the record supports conflicting inferences, we presume that the jury resolved any conflicting inferences in favor of the verdict, and we defer to the jury's determination. *See Jackson*, 443 U.S. at 319; *Brooks*, 323 S.W.3d at 899; *Clayton*, 235 S.W.3d at 778.

We have carefully reviewed all of the evidence in the light most favorable to the jury's verdict. In light of the record before us, we hold that a rational jury could have found beyond a reasonable doubt that Appellant acted with the intent to defraud or harm Perry as charged in Count I of the indictment. Accordingly, because legally sufficient evidence supports the jury's verdict that Appellant secured execution of a document by deception as charged, we overrule Appellant's first issue on appeal.

B. *Count II*

In his second issue, Appellant challenges the sufficiency of the evidence to support his conviction under Count II for securing the execution of the February 11 promissory note by Perry. Appellant contends that the State failed to prove (1) that he intended to defraud or harm Perry or (2) that he caused Perry to either sign or execute the February 11 promissory note.

For the reasons discussed above, and Perry's testimony that she relied on the same representations about the project when she decided to make the second $50,000 wire transfer, we disagree with Appellant that the State failed to prove the requisite

intent element for the charged offense under Count II. However, based on the record before us, we cannot conclude that the State adduced sufficient evidence to support the jury's verdict that Appellant secured execution of the February 11 promissory note by Perry.

Pursuant to Section 32.46, to convict Appellant of the charged offense under Count II, the State was required to prove that Appellant caused Perry "to *sign or execute*" a document. PENAL § 32.46(a)(1) (emphasis added). In this context, "execute" means "to bring (a legal document) into its final, legally enforceable form." *Liverman v. State*, 470 S.W.3d 831, 838 (Tex. Crim. App. 2015) (citing *Mid-Continent Cas. Co. v. Global Enercom Mgmt.*, 323 S.W.3d 151, 157 (Tex. 2010) (recognizing that "execute" has a broader meaning than "sign")). Here, it is undisputed that Perry did not sign the February 11 promissory note. The State argues that, as the lender, Perry executed the second promissory note when she wired the second $50,000 to the venture's account and, thus, by doing so, she accepted by actual performance the promise of repayment by the borrower, Appellant. However, as relevant to this appeal, an executed promissory note constitutes a written promise by the maker (the borrower) to pay the amount specified in the note to the payee that is *named* in the note. TEX. BUS. & COM. CODE ANN. § 3.104(a), (b) (West 2021); *see Texmarc Conveyor Co. v. Arts*, 857, S.W.2d 743, 746 (Tex. App.—Houston [14th Dist.] 1993, writ denied).

The second promissory note offered by the State, and admitted at trial, is dated February 11, 2016. The promissory note purports to indicate an agreement on that date between the borrower, "West-Tex Red Wolf Joint Venture by [Appellant]," and nobody—the lines and sections in the document to insert both the lender information and the identification of the payee are blank. Although Appellant's signature appears on the note, neither Perry's signature, her name, nor her identity in any type of capacity is subscribed to or appears anywhere on the document. In fact, other than

Appellant's name and signature as the borrower, no other person or entity is identified or named anywhere on the note. Indeed, through Perry's bank statements, the State did establish that Perry transferred $50,000 to the joint venture on February 12, 2016; however, based on the plain and unambiguous language of Section 32.46, actual performance cannot suffice here to establish the offense of securing execution of a *document* where the promissory note was neither signed nor filled out by Perry. Thus, we cannot conclude that the February 11 promissory note was "executed" by Perry—brought into its final, legally enforceable form—in accordance with Section 32.46.

Therefore, because a rational trier of fact could not have found beyond a reasonable doubt that Appellant *caused Perry to sign or execute any document*, we hold that the evidence is legally insufficient to support the jury's verdict that Appellant secured execution of a document by deception as charged in Count II of the indictment. Accordingly, we sustain Appellant's second issue on appeal.

IV. *This Court's Ruling*

We affirm the judgment of the trial court as to Count I. We vacate Appellant's conviction as to Count II, and we reverse the judgment of the trial court and render a judgment of acquittal as to Count II.

W. STACY TROTTER
JUSTICE

October 7, 2021

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

Panel consists of: Bailey, C.J.,
Trotter, J., and Williams, J.