Opinion issued October 2, 2018

In The

Court of Appeals

For The

First District of Texas

NO. 01-18-00056-CR

BERNELL JACKSON QUILLENS, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the 22nd District Court
Hays County, Texas[1]
Trial Court Case No. CR-16-0870

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[1] Originally appealed to the Third Court of Appeals in Austin, this case was transferred to this Court by the Texas Supreme Court pursuant to its docket equalization efforts. *See* TEX. GOV'T CODE ANN. § 73.001 (West 2014).

MEMORANDUM OPINION

A jury convicted appellant, Bernell Jackson Quillens, of three counts of the first-degree felony offense of trafficking a child–compelling prostitution and three counts of the first-degree felony offense of compelling prostitution.[2] The jury assessed appellant's punishment at forty years' confinement on each count, and the trial court ordered the sentences to run concurrently. In two points of error, appellant contends that the evidence is insufficient to support his conviction for counts III and VI of the indictment. We affirm.

Background

On October 15, 2015, the Kyle Police Department referred a case involving allegations of trafficking of S.S, a sixteen-year old female, to the Human Trafficking Unit of the Office of the Attorney General for investigation.[3] Based on the information received, Sergeant John Elizarde, an investigator with the Human Trafficking Unit, subpoenaed records for appellant's phone number, 504-615-4265, from Backpage.com, a website that traffickers use to advertise women for hire. In response to the subpoena, Backpage provided records linked to appellant's phone number which included advertisements containing photographs of S.S. in various

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2 *See* TEX. PENAL CODE ANN. §§ 20A.02(a)(7)(H), 43.05(a)(2) (West Supp. 2017).

3 R.B., S.S.'s mother, testified that S.S. was born on November 26, 1998, and was sixteen years old in June and July 2015.

states of undress. The records showed that the advertisements of S.S. had been purchased using appellant's email address, tharealtrillreal@gmail.com. The investigation also linked appellant's phone number and email address to his Facebook account.

On the night of June 30, 2015, Roque Leal was looking at advertisements on Backpage.com to find someone to hire for sex. Leal testified that, after consuming ten beers, he called a phone number that he found on a Backpage ad. Sometime after the call, a woman arrived at his house. When he opened the front door, she was standing there and a car was at the end of his driveway. Leal described the woman as approximately his height with black hair. After the woman came into Leal's house, Leal offered her something to drink, paid her $200 for sex, and had vaginal intercourse with her. Leal testified that the woman then left and he "heard them drive off."

Leal testified that his phone number at the time was 956-203-5338. Screen captures of the Backpage ads of S.S. during the time period in question show that the contact phone number listed on the ads was 504-615-4265, appellant's phone number. Appellant's and Leal's phone records, which were admitted at trial, showed that Leal placed his first call to 504-615-4265, appellant's phone number, at 12:06 a.m. CST, on July 1, 2015. The records also show several more calls between appellant and Leal in the early morning hours of July 1. Leal testified that these calls

with appellant's number occurred at approximately the same time that he recalled contacting the phone number on the Backpage ad, he had never previously contacted 504-615-4265, and the only way that he would have obtained the phone number was from a Backpage ad.

Cameron White, appellant's driver, testified that he drove S.S. and appellant to a house matching the description of Leal's house for an "out-call."[4] White and appellant dropped S.S. off at the house and later returned after she texted that she was ready to be picked up. When S.S. got in the car, White saw her give appellant the money she had received. White testified that the encounter in question occurred at night. Afterwards, White drove appellant and S.S. to a Sheraton hotel in Austin. S.S. stayed for a portion of the night at the hotel and then White and appellant took her home. White testified that he and appellant picked S.S up in the morning and the three of them went to the Wal-Mart in South Austin. As they were walking out of the store, a loss prevention employee stopped S.S. for shoplifting. A photo of S.S. and appellant taken from Wal-Mart's surveillance video dated July 1, 2015, was admitted at trial.

At the conclusion of the guilt-innocence phase of the trial, the jury found appellant guilty of three counts of trafficking a child–compelling prostitution and

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[4] Elizarde testified that an "out-call" occurs when a woman or child engaged in prostitution goes to the sex buyer's location for sex, as opposed to an "in-call" when the sex buyer goes to the location of the woman or child.

three counts of compelling prostitution. During the punishment hearing, Sergeant Dana Bowlin with the Human Trafficking Unit testified that subpoenaed records revealed that appellant had posted advertisements for prostitution on Backpage.com in eight states from September 2013 through August 2015. At the conclusion of the hearing, the jury assessed appellant's punishment at forty years' confinement on each count, and the trial court ordered the sentences to run concurrently.

Discussion

In two points of error, appellant contends that the evidence is insufficient to support his convictions for Count III of the indictment, Trafficking a Child-Compelling Prostitution, and Count VI, Compelling Prostitution.

A. Standard of Review

We review appellant's challenge to the sufficiency of the evidence under the standard enunciated in *Jackson v. Virginia*, 443 U.S. 307, 99 S. Ct. 2781 (1979). *See Brooks v. State*, 323 S.W.3d 893, 895 (Tex. Crim. App. 2010). We examine all of the evidence in the light most favorable to the jury's verdict to determine whether "any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *Jackson*, 443 U.S. at 318–19, 99 S. Ct. at 2788–89; *Williams v. State*, 235 S.W.3d 742, 750 (Tex. Crim. App. 2007). "Each fact need not point directly and independently to the guilt of the appellant, as long as the

cumulative force of all incriminating circumstances is sufficient to support the conviction." *Blackman v. State*, 350 S.W.3d 588, 595 (Tex. Crim. App. 2011).

The jury may reasonably infer facts from the evidence presented, credit the witnesses it chooses, disbelieve any or all of the evidence or testimony proffered, and weigh the evidence as it sees fit. *See Canfield v. State*, 429 S.W.3d 54, 65 (Tex. App.—Houston [1st Dist.] 2014, pet. ref'd). An appellate court determines "whether the necessary inferences are reasonable based upon the combined and cumulative force of all the evidence when viewed in the light most favorable to the verdict." *Hooper v. State*, 214 S.W.3d 9, 16–17 (Tex. Crim. App. 2007). In viewing the record, direct and circumstantial evidence are treated equally. *Id.* at 13. "Circumstantial evidence is as probative as direct evidence in establishing the guilt of an actor, and circumstantial evidence alone can be sufficient to establish guilt." *Clayton v. State*, 235 S.W.3d 772, 778 (Tex. Crim. App. 2007) (quoting *Hooper*, 214 S.W.3d at 13). An appellate court presumes that the factfinder resolved any conflicting inferences in favor of the verdict and defers to that resolution. *See Jackson*, 443 U.S. at 326, 99 S. Ct. at 2793.

B. Applicable Law

Texas Penal Code section 43.05(a), "Compelling Prostitution," states that "[a] person commits an offense if the person knowingly . . . causes by any means a child younger than 18 years to commit prostitution, regardless of whether the actor knows

the age of the child at the time of the offense." TEX. PENAL CODE ANN. § 43.05(a) (West Supp. 2017). Prostitution includes offering to engage, agreeing to engage, or engaging in sexual conduct for a fee. *Id.* § 43.02(a)(1). "[O]ne who provides opportunity for a willing minor to engage in prostitution and influences, persuades or prevails upon her to do so has . . . caused the prostitution . . . ." *Waggoner v. State*, 897 S.W.2d 510, 512 (Tex. App.—Austin 1995, no writ) (internal quotation omitted).

Section 20A.02, "Trafficking of Persons," states that "[a] person commits an offense if the person knowingly: . . . (7) traffics a child and by any means causes the trafficked child to engage in, or become the victim of, conduct prohibited by: . . . (H) Section 43.05 (Compelling Prostitution); . . . or (8) receives a benefit from participating in a venture that involves an activity described by Subdivision (7) . . . ." TEX. PENAL CODE ANN. § 20A.02(a)(7), (8) (West Supp. 2017). A "[c]hild" is defined as "a person younger than 18 years of age." *Id.* § 20A.01(1) (West Supp. 2017). "'Traffic' means to transport, entice, recruit, harbor, provide, or otherwise obtain another person by any means." *Id.* § 20A.01(4).

C. Analysis

In his first point of error, appellant contends that the evidence is insufficient to support his conviction for Count III of the indictment, Trafficking a Child-Compelling Prostitution. In his second point of error, he contends that the

evidence is also insufficient to support his conviction for Count VI of the indictment, Compelling Prostitution. Specifically, appellant argues that "Counts III and VI allege an incidence of child trafficking and compelling prostitution that occurred on July 1, 2015, but the evidence is clear that there was no such incident on that day."[5]

Counts III and VI of the indictment alleged as follows:

Count III
Trafficking a Child–Compelling Prostitution

PARAGRAPH A

On or about the 1st day of July, A.D., 2015, in Hays County, Texas, the Defendant, Bernell Jackson Quillens did knowingly traffic [S.S.], a child younger than 18 years of age, and by any means caused [S.S.] to engage in or become the victim of conduct prohibited by Section 43.05—Compelling Prostitution.

PARAGRAPH B

On or about the 1st day of July, A.D., 2015, in Hays County, Texas, the Defendant, Bernell Jackson Quillens did knowingly receive a benefit from participating in a venture that involved trafficking [S.S.], a child younger than 18 years of age, and by any means caused [S.S.] to engage in or become the victim of conduct prohibited by Section 43.05—Compelling Prostitution.[6]

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[5] Appellant does not challenge the legal sufficiency of his convictions on Counts I, II, IV, and V, and has therefore waived any arguments as to those counts. *See* TEX. R. APP. P. 38.1.

[6] The trial court instructed the jury that a defendant may be convicted of trafficking by finding either that he knowingly trafficked a child or that he knowingly received a benefit from participating in a trafficking venture as set forth in Penal Code section 20A.02.

Count VI
Compelling Prostitution

On or about the 1st day of July, A.D., 2015, in Hays County, Texas, the Defendant, Bernell Jackson Quillens did knowingly cause by any means [S.S.], a child younger than 18 years of age, to commit prostitution.

The evidence shows that S.S. was sixteen years old on July 1, 2015. Leal testified that, on the night of June 30, 2015, he was looking at advertisements on Backpage.com to find someone to hire for sex. The phone records admitted at trial show that Leal made his first phone call to appellant's phone number at 12:06 a.m. CST, on July 1, 2015, in response to a Backpage ad. A person matching S.S.'s description arrived at his home. Leal paid the woman $200 and had vaginal intercourse with her. Appellant's driver testified that he and appellant drove S.S. to a house matching the description of Leal's house for an "out-call." When they picked S.S. up, White saw her hand money to appellant.

In support of his argument that "no incident of child trafficking" occurred on July 1, 2015, appellant points to Leal's testimony that he looked at the Backpage ad on the evening of June 30 and to White's testimony that he picked S.S. up on the morning of July 1. However, these facts do not contradict the jury's finding that trafficking occurred on July 1. Leal testified that he was looking at Backpage on the night of June 30. The evidence shows that Leal contacted appellant at 12:06 a.m., on July 1. Based on the evidence presented, the jury could have reasonably inferred that both facts were true—that Leal began looking at Backpage on June 30 and

responded to an ad shortly after midnight on July 1. *See Canfield*, 429 S.W.3d at 65. Further, based on the evidence, it was also rational for the jury to determine that Leal's sexual encounter with S.S. occurred after he called appellant on July 1. And, the jury could have reasonably inferred that both the prostitution and S.S.'s trip to Wal-Mart occurred on the same day. White testified that after he, appellant, and S.S. left Leal's home, and they stayed at a Sheraton hotel for an unspecified period of time before they took S.S. to Wal-Mart where she was stopped for shoplifting.

Viewing the evidence in the light most favorable to the verdict, a rational trier of fact could have found that appellant knowingly trafficked S.S. and caused her to engage in prostitution with Leal on July 1, 2015, *and* that he knowingly received a benefit (money) from the trafficking of S.S. to Leal on July 1, 2015. Therefore, the evidence supports appellant's conviction under either Paragraph A or B of Count III.

Appellant also asserts that the evidence is insufficient to support his conviction for compelling prostitution. Based on the evidence presented, a rational trier of fact could have also determined that on July 1, 2015, appellant knowingly caused S.S., by any means, to commit prostitution. Appellant posted S.S. on a website known to be used by traffickers to advertise women, arranged for his driver to take S.S. to an "out-call," waited while she had sex with Leal, and then took her to a hotel. *See e.g.*, *Kelly v. State*, 453 S.W.3d 634, 642 (Tex. App.—Waco 2015, pet. ref'd) (finding evidence sufficient to support defendant's conviction for

compelling prostitution where defendant made phone calls to men at minor's request, acted as translator for men who spoke Spanish, and provided bedroom in her house); *Waggoner*, 897 S.W.2d at 512–13 (finding evidence sufficient to support conviction for compelling prostitution where defendant provided thirteen-year old with contact, condom, and cell phone, negotiated price, and drove child to location for sex). The evidence therefore supports appellant's conviction on Count VI.

Accordingly, we hold that the evidence is sufficient to sustain appellant's convictions on Counts III and VI of the indictment. Appellant's first and second points of error are overruled.

Conclusion

We affirm the trial court's judgment.

Russell Lloyd
Justice

Panel consists of Justices Keyes, Bland, and Lloyd.

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