

Opinion issued August 1, 2019



In The
Court of Appeals
For The
First District of Texas

NOS. 01-18-00347-CR *and*
01-18-00348-CR

CLARENCE MCNATT, Appellant
V.
THE STATE OF TEXAS, Appellee

On Appeal from the 262nd District Court
Harris County, Texas
Trial Court Case Nos. 1532676 & 1532677

MEMORANDUM OPINION

The State charged Clarence McNatt with solicitation of capital murder and two counts of solicitation of aggravated kidnapping with the intent to commit sexual assault. *See* TEX. PENAL CODE §§ 15.03(a), 20.04(b). McNatt pleaded not guilty to each charge, and the case was tried to a jury. The jury acquitted McNatt on the

solicitation of capital murder charge but found him guilty on both charges of solicitation of aggravated kidnapping. On the first charge, the jury assessed punishment at ten years in prison and recommended community supervision and a fine of \$5,000. On the second, it assessed five years in prison.

On appeal, McNatt contends that the evidence is insufficient to support his conviction because the State failed to show that he (1) affirmatively communicated his intent that his former wife and her friend be sexually assaulted once they were kidnapped and (2) actually intended for both his former wife and her friend to be sexually assaulted. We affirm.

BACKGROUND

After eight years of marriage, McNatt's wife left him in October 2016 and moved in with her close friend. McNatt, a former federal agent with the Border Patrol and the Marshal Service, confided in his friend, Edwin Kent, about the marital troubles that preceded the separation. Kent had served in the Navy. Kent and McNatt lived close to each other, frequently spoke on the telephone, and would get together to repair cars and do other things a few times a week.

McNatt was aware that some of the men Kent knew from his time in the military could be hired to commit crimes. After McNatt's wife left him, McNatt asked Kent if his contacts from the military could "take[] care of" his wife and her friend. According to Kent, "He wanted them kidnapped. He wanted them raped." At

first, Kent did not think McNatt was serious about this request. As time went on, though, McNatt continued to talk about it and gave Kent the women's names and addresses to pass along to his contacts.

To buy more time, Kent asked McNatt to write down his instructions about what he expected them to do to the women, so he could pass them along. McNatt gave Kent a letter and an index card that detailed how he wanted his wife and her friend treated. Among other things, the letter instructs that after grabbing the two women and forcing them into the car, they are to “cut off all clothes” and have “one sit between them to touch the T & A” on the ride to the safe house. In the safe house “[until] you leave you do everything to break both girls,” and “Anything you want to do to [the friend] is A.O.K.” The letter continues: “My Dream punishment for [the friend] is the 10+ days with us. 30 days at nuthouse. And sell or trade her to human trafficking. . . .” As to his wife, McNatt wrote, “it depends what you find out. . . . [She] could also be given the DREAM JOB. I've got oxy's [sic] 15 mg.—morphine 15 mg. & Demerol 50 mg. for the girls—distortion of time & pleasure.” McNatt also wrote that the men were to “record all sex [until] I view.” McNabb also wrote the home and work addresses for the women on an index card and gave that to Kent.

Kent took the letter and the card and told McNatt about three friends who could help him with the situation. Kent took no action after that conversation until he took the opportunity to speak with some police officers who had responded to a

disturbance involving another member of Kent's household. After the officers had dealt with the disturbance, Kent asked for their advice about handling McNatt's request. The officers arranged for him to discuss the issue with Officer J. Phillips, a 16-year veteran of the Pasadena Police Department.

Officer Phillips proposed that Kent leave the matter for undercover officers to handle. As instructed by Officer Phillips, Kent spoke with McNatt, telling him that he would help arrange for his friends to meet with McNatt. Kent then contacted Officer Phillips, who told him the time, date and location for the meeting. After Kent relayed that information to McNatt, he had no more involvement in the undercover sting operation.

Next, Officer Phillips left a voicemail for McNatt. McNatt returned the call, and they made plans to meet on November 29th in a busy parking lot. Officer Phillips sent an advance team to set up surveillance in the area ahead of the meeting. When Officer Phillips' group arrived at the parking lot, they called McNatt and gave him their vehicle description.

Officer Phillips understood from McNatt that "[w]e were supposed to kidnap both girls, sexually assault both and from my understanding, . . . we were going to kill [the friend,] but [whether they were to kill the wife] would be a questionable issue, depending on what was learned from her interrogations." Officer Phillips

noted that in the letter McNatt wrote for Kent, McNatt described kidnapping the women

off the road somewhere, tak[ing] their car. And then during that day, I believe, it was the first day, there was discussion about if we had a vehicle that had police lights or lights on it to act as a police officer to stop them on the road, kidnap them, throw them in the trunk and take them to the location that we were going to do all this.

On the audio recording of the first meeting, McNatt can be heard explaining how easy it would be to kidnap the women after they leave their jobs at the bar because they usually carpool and no one is around that time of night, and telling the officers about occasions when he watched them leave the bar together and followed them for part of the route they take. McNatt can also be heard saying that he didn't care what they did to the women, that they could "slap them with their dicks" for all he cared.

Officer T. Neilon, another experienced undercover officer who participated in the sting, told McNatt that they ordinarily charged \$5,000 for what McNatt wanted them to do. Officer Neilon further testified that McNatt

indicated that he wanted both [women] kidnapped, taken possibly from as they were leaving . . . one of their places of employment. He wanted them sexually tortured or roughed up and all this videotaped. And initially that's what we discussed in the beginning of the conversation that day."

Officer Phillips set up a second meeting with McNatt for the next day, telling McNatt he wanted him to provide additional details about what he wanted done to

the women, give the officers information that McNatt had collected from following the women, and arrange for payment.

At that meeting, Officer Phillips discussed with McNatt in greater depth about “where we were going to get them,” meaning kidnap the women. McNatt described what he considered the best way for them to accomplish the kidnapping, that being to pick them up after they finished work at the bar. McNatt showed the officers pictures of the bar, described the cars the women drove, and told the officers the time the women left work and the route they took home.

McNatt brought \$100 cash with him as a down payment. McNatt also showed Officer Phillips three rings he inherited from his father. He told Officer Phillips that, according to their last appraisal, he believed the rings to be worth about \$5,000 but that he wanted to have them appraised again before he would give them to Officer Phillips. McNatt also told the officers that, “if push comes to shove,” he also had collectible coins that he could give them for payment.

Officer Phillips told the jury that during the second meeting, McNatt remarked that he “thought it was pretty cool” that the women would be stripped and tied up in the abduction. He instructed the officers to hit the women to gain their submission and to treat the women “like dogs,” particularly the friend, who McNatt believed had manipulated his wife into leaving him. On the audiotape of that meeting, one of the officers can be heard asking McNatt, “Are you good with us fucking your wife too

if we gotta do that? I mean, are you cool with that?” McNatt responded, “Yeah, I am.”

Toward the end of the meeting, Officer Phillips indicated the men were likely to move quickly on the abduction and asked how long it would take McNatt to get ready with food and other supplies once they were ready. McNatt responded that he could be ready in an hour or so, depending on how far he needed to go to meet with them.

After the cash changed hands, Officer Phillips signaled the waiting arrest team, which took McNatt into custody. In the inventory search of McNatt’s truck, officers found two bags, one pink and one blue, each containing the following items: dog leashes, bowls, and other dog toys; handcuffs; sandals; zip ties; hair color; toothpaste; toothbrushes; flushable wipes; bars of soap; deodorant; bundles of rope; duct tape; condoms; various types of lubricant; and disposable gloves. Many of the items, such as the sandals, the toothbrushes, and the deodorant, were pink or blue to coordinate with the bag that held them.

In the search of McNatt’s home, officers found a tackle box with a variety of medications, including the sedatives he mentioned in the letter he wrote for Kent.

DISCUSSION

A. Standard of Review and Applicable Law

In reviewing the legal sufficiency of the evidence to support a criminal conviction, a court of appeals determines whether, after viewing the evidence in the light most favorable to the verdict, the factfinder was rationally justified in finding the essential elements of the crime beyond a reasonable doubt. *Jackson v. Virginia*, 443 U.S. 307, 319 (1979); *Brooks v. State*, 323 S.W.3d 893, 895 (Tex. Crim. App. 2010).

As the exclusive judge of the facts, the jury may believe or disbelieve all or any part of a witness's testimony. *See Chambers v. State*, 805 S.W.2d 459, 461 (Tex. Crim. App. 1991). We presume that the factfinder resolved any conflicting inferences in favor of the verdict, and we defer to that resolution. *See Jackson*, 443 U.S. at 326. On appeal, we may not reevaluate the weight and credibility of the record evidence and substitute our own judgment for that of the factfinder. *Williams v. State*, 235 S.W.3d 742, 750 (Tex. Crim. App. 2007). In reviewing the evidence, 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. *Hooper v. State*, 214 S.W.3d 9, 13 (Tex. Crim. App. 2007). Juries are permitted to make reasonable inferences from circumstantial evidence presented at trial. *See id.*

For evidence to be sufficient, the State need not disprove all reasonable alternative hypotheses that are inconsistent with a defendant's guilt. *Cantu v. State*, 395 S.W.3d 202, 207–08 (Tex. App.—Houston [1st Dist.] 2012, pet. ref'd). Rather, a court considers only whether the inferences necessary to establish guilt are reasonable based upon the cumulative force of all the evidence when considered in the light most favorable to the jury's verdict. *Wise v. State*, 364 S.W.3d 900, 903 (Tex. Crim. App. 2012); *Hooper*, 214 S.W.3d at 13.

To support a jury verdict that the defendant is guilty of solicitation of aggravated kidnapping with the intent to commit sexual assault, the State must have proven beyond a reasonable doubt that the defendant requested, commanded, or attempted to induce another to engage in specific conduct that, under the circumstances surrounding his conduct as the defendant believes them to be, would constitute the felony or make the other a party to its commission. TEX. PENAL CODE § 15.03(a). The offense of criminal solicitation to commit a capital or first-degree felony is complete when a culpable request or inducement is unilaterally presented. *See Majid v. State*, 713 S.W.2d 405, 407 (Tex. App.—El Paso 1986, pet. ref'd).

The evidence must prove that the defendant made the request with the specific intent that the capital or first-degree felony be committed. *See Richardson v. State*, 681 S.W.2d 683, 687 (Tex. App.—Houston [14th Dist.] 1984), *aff'd*, 700 S.W.2d 591 (Tex. Crim. App. 1985). The uncorroborated testimony of the person allegedly

solicited is insufficient to support conviction under section 15.03, and the evidence must show that the solicitation was “made under circumstances strongly corroborative of both the solicitation itself and the actor’s intent that the person act on the solicitation.” TEX. PENAL CODE § 15.03(b).

B. Evidence that McNatt affirmatively communicated his intent that the women be sexually assaulted once they were kidnapped

McNatt claims that no evidence supports the jury’s finding that he asked for the women to be sexually assaulted after they were kidnapped because he did not reach out to McNatt or initiate any of the meetings. While it is true that McNatt did not reach out directly to the officers, he did enlist Kent to help him find men who were willing to accept pay for committing crimes, and he returned Officer Phillips’ phone call while under the impression that the officer was one of those men. McNatt took the initiative in returning the phone call and meeting with the undercover officers at the appointed times and places. Both Officer Phillips and Officer Neilon testified that McNatt wanted both women kidnapped and sexually assaulted.

McNatt also wrote a letter explaining what he wanted to have done to the women. McNatt claims that the letter McNatt wrote for Kent is of dubious origin, but McNatt did not object to its authentication and admission at trial. We are bound to review the evidence in a light favorable to the verdict and prohibited from second-guessing the jury’s evaluation of the letter’s weight and credibility. *See Williams*, 235 S.W.3d at 750. The audio recordings of McNatt’s meetings with the officers,

while inaudible at times, are consistent with this testimony and other evidence. *See, e.g., Ivatury v. State*, 792 S.W.2d 845, 849 (Tex. App.—Dallas 1990, pet. ref'd) (evidence, including audio recording, established that defendant originated idea of harming agent). We therefore conclude that the jury was rationally justified in finding beyond a reasonable doubt that McNatt affirmatively communicated his intent that the women be sexually assaulted after they were kidnapped. *See Jackson*, 443 U.S. at 319; *Brooks*, 323 S.W.3d at 895.

B. Evidence of McNatt's intent that the undercover officers act on the solicitation

McNatt asserts that his convictions are in error because no evidence supports the jury's finding that he intended that the officers act on his request that they sexually assault the women. On the contrary, much of the audio recording of the first meeting is unintelligible, but what can be understood is consistent with the officers' testimony and corroborates other evidence that McNatt intended for the women to be sexually abused and demeaned. McNatt gave the officers \$500 cash and offered other valuables to complete the payment. The items found in the pink and blue bags found in McNatt's truck—in particular, the handcuffs, the dog leashes, and the condoms—show that McNatt had actually prepared for the scenario to be realized, and thus constitutes further proof that McNatt intended for the officers to act on his request. McNatt contends that the letter he wrote for Kent is not evidence of his intent because he did not attempt to solicit Kent. This contention, however, ignores

evidence that Kent had McNatt write the letter so that he could provide it to the individuals who were available for hire. The letter also references the sedative medications McNatt said he had for the girls, which were found in McNatt's home. Viewing this evidence in the light most favorable to the verdict, we conclude that the jury was rationally justified in finding beyond a reasonable doubt that McNatt intended for the undercover officers to act on his solicitation. *See Jackson*, 443 U.S. at 319; *Brooks*, 323 S.W.3d at 895.

As a result, we hold that legally sufficient evidence supports the jury's verdicts finding McNatt guilty of solicitation of aggravated kidnapping with the intent to commit sexual assault against both his former wife and her friend.

CONCLUSION

We affirm the judgments of the trial court.

Gordon Goodman
Justice

Panel consists of Chief Justice Radack and Justices Goodman and Countiss.

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