

**Affirmed and Memorandum Opinion filed September 8, 2016.**



**In The**

**Fourteenth Court of Appeals**

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**NO. 14-15-00819-CR**

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**DEANDRE J. BRYANT, Appellant**

**V.**

**THE STATE OF TEXAS, Appellee**

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**On Appeal from the 179th District Court  
Harris County, Texas  
Trial Court Cause No. 1424910**

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

Appellant Deandre J. Bryant was convicted of aggravated robbery. Tex. Penal Code Ann. § 29.03(a)(3) (West 2011). Appellant argues in his sole issue on appeal that legally insufficient evidence supports his conviction because the State did not introduce any evidence establishing that he was at the complainant's home on the date of the robbery. We hold that the direct and circumstantial evidence admitted during appellant's bench trial was legally sufficient for the fact-finder to

find beyond a reasonable doubt that appellant committed the offense of aggravated robbery. We therefore affirm the trial court's judgment.

### **BACKGROUND**

Harry Thrailkill, the complainant, collected firearms and vintage money, such as silver certificates and silver coins. Thrailkill also kept a large amount of non-collectible cash in his residence because, he explained, his wife liked to go to Las Vegas occasionally. Thrailkill's grandson Alex had lived with the Thrailkills prior to the robbery at issue. Alex and his friend, Devon Zaragoza, knew where the Thrailkills kept the firearms and money in the house.

Behind Thrailkill's house was a closed convenience store that fronted on Richmond Avenue. A gate in Thrailkill's backyard fence opened onto a pathway that led to the convenience store's parking lot. Although the convenience store was closed, it shared a parking lot with several operating businesses. A security camera from one of those businesses recorded a white car pulling into the convenience store's parking lot at 4:30 a.m. on February 19, 2014. The car backed into a parking space and then remained in that spot for several hours.

That same morning, Thrailkill walked out of his house to go to work between 6:30 and 6:45 a.m. As Thrailkill was opening his garage, someone grabbed him from behind and hit him on the head with a metal object. Thrailkill saw two attackers, one with a handgun. Thrailkill attempted to resist, but the gunman hit him with the pistol, knocking him down. The second assailant shocked Thrailkill with a stun gun while the gunman continued hitting him in the head with the pistol. Thrailkill stopped resisting and the attackers then led him into the house.

The assailants sat Thrailkill and his wife in the kitchen and told them they

wanted money, guns, and jewelry. Thrailkill saw that the gunman wore a black sweatshirt, black sweatpants with gray sweatpants underneath, and a black cap and had a blue bandana around his face. Thrailkill observed that the second man wore a red Lamar High School hoodie with the hood drawn tight around his face.

The assailants led the Thrailkills up to the second floor and placed them in a bathroom. The gunman watched over them while the second man began searching the house for items they were interested in taking. According to Thrailkill, the second man appeared to know what he was searching for and where those things were located. The second man found Thrailkill's Colt .45 1911 pistol in a nightstand and then gathered up additional guns, knives, jewelry, purses, watches, electronics, and vintage money, which he deposited at the top of the stairs. Once the assailants were satisfied, the second man began carrying the Thrailkills' belongings downstairs and into Thrailkill's pick-up truck parked outside the garage. When he was done loading the truck, he signaled the gunman, who closed the bathroom door and left the house. Thrailkill watched the robbers back the truck out of the driveway. Thrailkill's wife called 9-1-1 at 7:42 a.m. Thrailkill subsequently went to the hospital, where he was treated for a broken nose and various bumps and abrasions he had suffered at the hands of the robbers.

Thrailkill's daughter and her husband helped the Thrailkills clean the blood from throughout the house several days after the robbery. While cleaning, they found a rubber glove in a closet. Thrailkill remembered that the robbers wore gloves; he did not, however, remember that they had taken them off while in the house. Thrailkill called the police and they picked up the glove.

A neighbor's security camera captured an image of Thrailkill's truck driving down the street at 7:41 a.m. The shopping center security camera recorded Thrailkill's truck pulling into the convenience store parking lot, where it parked

next to the white car. There was movement between the two vehicles as the stolen goods were transferred from the truck to the white car. The suspects then drove the white car out of the parking lot, turning right onto Richmond Avenue. The police found Thrailkill's truck later that same day.

Peter Muench was driving west on Richmond Avenue about 7:45 a.m. on February 19, 2014, when he saw a white car exit a convenience store parking lot at a high rate of speed, almost colliding with the car in front of him. Muench saw the car's occupants throw several items out of the car, including latex gloves. Suspicious, Muench pulled up behind the white car at a stop light where he took several pictures with his phone, including one of the car's license plate. Muench saw two occupants and noted that the passenger was wearing a red hoodie. Muench drove back to the scene, where he collected one of the latex gloves he had seen thrown from the white car. Muench later went to the shopping center, where he inquired if there had been any burglaries. One of the stores directed him to the neighborhood behind the shopping center. One of the neighbors directed him to the Thrailkill residence. Once Muench saw Thrailkill's battered face, he knew he was in the right place. Muench turned his pictures and the latex glove over to the police.

Officer Kenneth Edie of the Houston Police Department was the lead investigator into the robbery. Using Muench's photographs, Edie learned that the white car belonged to Mary Mosley, appellant's girlfriend. Edie interviewed Mosley and learned that she had loaned her white car to appellant, who returned it on February 19. Mosley also let appellant use her cell phone at the same time. Mosley showed Officer Edie a picture on the phone, which depicted a Colt .45 pistol, a bag of marijuana, and money. Now aware of appellant, Edie checked appellant's Facebook page, which was public, and saw the same picture had been

posted on February 21. Appellant was in several of the pictures on his Facebook page and his body type and dress matched the description of one of the Thrailkill robbery suspects. When shown the Facebook photo, Thrailkill identified the Colt .45 pistol in the picture as the one that was taken from his nightstand on February 19. Appellant's Facebook page contained numerous other photos showing him with money and guns.

The police performed a phone dump on Mosley's phone. The dump revealed that Mosley texted the cell phone multiple times on the morning of February 19 asking when appellant was returning her car. The dump also revealed Facebook chats that included the latitude and longitude of the phone during the chats. The phone's location during these chats was the general area of the convenience store parking lot and the Thrailkills' house.

Records subpoenaed from the cell phone company revealed that Mosley was the subscriber for the phone and appellant was listed as an additional user. The records also showed that on the morning of February 19, between 5:45 a.m. and 7:09 a.m., the cell tower covering the area of the Thrailkill house handled communications from the phone. The records also revealed that there was no data collected from the phone between 7:09 a.m. and 7:46 a.m.: the period when the robbery was in progress.

The Thrailkills knew one person who attended Lamar High School: their grandson's friend, Devon Zaragoza. Soon after the robbery, Thrailkill's grandson told him to check the Facebook page of a person named Greg Young. Thrailkill typed in the name and he saw a picture of Greg Young holding money, including vintage money. Beside Young in the picture was a Halliburton Zero gun case that matched a gun case that had been stolen during the robbery. Thrailkill concluded Young was one of the robbers. Thrailkill sent the picture and the information to

Eddie.

Eddie learned through his investigation that Young and appellant were friends and that both were friends of Zaragoza. Eddie checked Young's Facebook page, which was public, and discovered a photo of Young and Zaragoza together. Eddie also found a February 19 Facebook conversation between the two of them in which Young discussed the robbery and promised that he would give Zaragoza a "stack and a gun." Eddie explained that a "stack" is a sum of money. According to Zaragoza, Young gave Zaragoza \$600 to \$700 when they met later that same day. Young told Zaragoza during that meeting that appellant was with him during the robbery. Zaragoza eventually pled guilty to receiving stolen property. When he pled guilty, Zaragoza signed a statement admitting that he had received the money from Young and appellant and that he knew the money had been stolen from Thrailkill.

The State tested the gloves and other items recovered during the investigation for DNA. Young could not be excluded as a source for the DNA mixture on the exterior of the glove found by Muench. Thrailkill could not be excluded as a source for the DNA inside the glove found in the closet. Appellant's DNA was not found on any of the items recovered during the investigation.

Appellant was arrested and eventually waived his right to a jury trial. At the conclusion of the evidence, the trial court found appellant guilty of aggravated robbery and sentenced him to 35 years in prison. This appeal followed.

#### **ANALYSIS**

In his single issue on appeal, appellant asserts that the evidence is insufficient for a rational trier of fact to find beyond a reasonable doubt that he

committed aggravated robbery because the State introduced no direct evidence, such as eyewitness testimony, placing him in the Thrailkill home at the time of the robbery.

### **I. Standard of review and applicable law**

In reviewing the sufficiency of the evidence to support a conviction, we determine “whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.” *Johnson v. State*, 364 S.W.3d 292, 293–294 (Tex. Crim. App. 2012) (quoting *Jackson v. Virginia*, 443 U.S. 307, 319 (1979)). The trial court, as the trier of fact in a bench trial, is the sole judge of the credibility of witnesses and the weight to be given their testimony. *Joseph v. State*, 897 S.W.2d 374, 376 (Tex. Crim. App. 1995). The trier of fact 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). When the record supports conflicting inferences, the reviewing court presumes the trier of fact resolved the conflicts in favor of the State and defers to that determination. *Clayton v. State*, 235 S.W.3d 772, 778 (Tex. Crim. App. 2007). 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). When examining the sufficiency of the evidence, we consider all of the direct and circumstantial evidence admitted, whether properly or improperly. *See Conner v. State*, 67 S.W.3d 192, 197 (Tex. Crim. App. 2001).

A person commits robbery if, in the course of committing theft and with the intent to obtain or maintain control of the property, he intentionally or knowingly

threatens or places another in fear of imminent bodily injury or death. Tex. Penal Code Ann. § 29.02(a)(2) (West 2011). A person commits aggravated robbery if he commits robbery and uses or exhibits a deadly weapon. *Id.* § 29.03(a)(2). A firearm is per se a deadly weapon. *Id.* § 1.07(a)(17). With some exceptions not relevant here, the State must prove that the accused is the person who committed the crime charged. *Smith v. State*, 56 S.W.3d 739, 744 (Tex. App.—Houston [14th Dist.] 2001, pet. ref'd).

## **II. The circumstantial evidence in the record supports appellant's conviction of aggravated robbery.**

Appellant argues that the evidence is insufficient to support his conviction because (1) the State relied on circumstantial evidence and did not introduce any direct evidence, such as eyewitness testimony or DNA evidence, placing him at the scene of the robbery; and (2) there was inconsistent testimony admitted during the trial regarding the clothing worn by one of the two robbers.

We turn first to appellant's complaint regarding the lack of direct evidence in the record. Appellant specifically complains about the lack of eyewitness testimony placing him at the scene of the robbery and the lack of DNA evidence connecting him to the crime.

The identity of a perpetrator may be proven through direct or circumstantial evidence and through reasonable inferences. *Smith*, 56 S.W.3d at 744. Proof of an accused's identity through circumstantial evidence is not subject to a more rigorous standard than is proof by direct evidence. *Id.* (citing *McGee v. State*, 774 S.W.2d 229, 238 (Tex. Crim. App. 1989)). Eyewitness testimony is not required to convict a defendant. *Greene v. State*, 124 S.W.3d 789, 792 (Tex. App.—Houston [1st Dist.] 2003, pet. ref'd). DNA evidence also is not required. *See Harmon v. State*, 167 S.W.3d 610, 614 (Tex. App.—Houston [14th Dist.] 2005, pet. ref'd) (rejecting



contention that lack of DNA evidence connecting defendant to crime rendered evidence insufficient). Similarly, the fact that there may be inconsistent evidence regarding the clothing worn by the robbers does not render the evidence insufficient as we presume the trier of fact resolved any conflicts in the evidence in favor of the State. *Williams v. State*, 235 S.W.3d 742, 750 (Tex. Crim. App. 2007).

Although appellant attacks the sufficiency of the evidence by pointing out the perceived weakness of certain discrete pieces of evidence in the record, when resolving a sufficiency challenge we must look at the combined and cumulative force of all the evidence. *Merritt v. State*, 368 S.W.3d 516, 526 (Tex. Crim. App. 2012). The evidence introduced at trial showed that a white car belonging to appellant's girlfriend was filmed in a parking lot behind the Thrailkill home, the scene of the robbery, on the morning of the robbery. That same car was seen leaving the parking lot at a high rate of speed soon after the end of the robbery. Appellant's girlfriend told the police that she had loaned both her car and her cell phone to appellant on the day of the robbery. The phone had a picture of some of the items stolen from the Thrailkill home. Records for the phone established that it was being used in the vicinity of the Thrailkill home around the time of the robbery. The police found photos of items stolen from Thrailkill on appellant's Facebook page as well as on Young's Facebook page. Young told Zaragoza that appellant was with him during the robbery. We hold that the cumulative force of this circumstantial evidence is sufficient to support appellant's conviction. *See Gardner v. State*, 306 S.W.3d 274, 285–86 (Tex. Crim. App. 2009) (concluding evidence sufficient to support conviction despite lack of eyewitness testimony); *Harmon*, 167 S.W.3d at 614 (concluding lack of DNA evidence did not render evidence insufficient). We overrule appellant's single issue on appeal.

## CONCLUSION

Having overruled appellant's sole issue on appeal, we affirm the judgment of the trial court.

/s/ J. Brett Busby  
Justice

Panel consists of Justices Busby, Donovan, and Wise.  
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