



**Fourth Court of Appeals**  
**San Antonio, Texas**

**MEMORANDUM OPINION**

No. 04-15-00612-CR

Glen Leon **DUKES**,  
Appellant

v.

The **STATE** of Texas,  
Appellee

From the 379th Judicial District Court, Bexar County, Texas  
Trial Court No. 2013CR4799  
Honorable Ron Rangel, Judge Presiding

Opinion by: Marialyn Barnard, Justice

Sitting: Karen Angelini, Justice  
Marialyn Barnard, Justice  
Rebeca C. Martinez, Justice

Delivered and Filed: September 14, 2016

**AFFIRMED**

Appellant, Glen L. Dukes, was indicted for the offense of intentionally causing the death of Jacqueline Johnson while in the course of committing or attempting to commit the offense of kidnapping Jacqueline. A jury found Dukes guilty of capital murder, and the trial court assessed punishment at life in prison. In two issues on appeal, Dukes asserts (1) the evidence is insufficient to support the jury's finding that he kidnapped Jacqueline and (2) the trial court violated his constitutional right to a public trial. We affirm.

## BACKGROUND

In the early morning hours of June 2, 2012, police responded to the scene of a possible body on fire. After the fire was suppressed, the burned remains of a human body were discovered. The victim was later identified as Jacqueline Johnson.

The State's theory of the case was that Dukes restrained Jacqueline against her will, strangled her to death, moved her body to a field, and then set her body on fire. The State called several witnesses at trial to support its theory, but the testimony of two witnesses was relevant to the issue of whether Dukes kidnapped Jacqueline: Jennifer Hernandez and Mandy Beers.<sup>1</sup> Hernandez testified she first met Jacqueline when they were both prostitutes on the same street. Hernandez eventually moved into the same house in which Dukes and Jacqueline were living. Hernandez described the relationship between Jacqueline and Dukes and between herself and Dukes as "friends." However, she also said Dukes was Jacqueline's pimp, and he would force Jacqueline to obey him by either "push[ing] her around" or by making other girls fight Jacqueline.

According to Hernandez, Jacqueline made a lot of money for Dukes, but she eventually moved out of his house, at which time Hernandez did not see her on the streets and had no further contact with her. Hernandez also moved out of the house and went to work at a strip club, but she eventually returned to Dukes's house. By this time, Hernandez had not heard from Jacqueline, did not know anything about her, and did not know whether Jacqueline was alive or dead. On the same day Hernandez returned to Dukes's house, she told him she had a dream about "a girl that . . . was on fire and she was strangled . . . ." Hernandez said Mandy Beers, who was also in the

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<sup>1</sup> On appeal, Dukes does not challenge the sufficiency of the evidence in support of the jury's finding that he caused Jacqueline's death by either placing his arm around her throat and neck and impeding her normal breathing or blood circulation by applying pressure to her throat and neck, or by placing a plastic bag over her head and impeding her normal breathing or blood circulation by blocking her nose and mouth. Because Dukes challenges only the sufficiency of the evidence in support of the jury's implied finding that he caused Jacqueline's death while in the course of committing or attempting to commit the offense of kidnapping, we limit our factual discussion to the evidence relevant to that issue.

house, pulled a news story up on her cell phone about the police finding a burned body. Hernandez testified that Dukes told them he was the “one that did it.” Hernandez testified as follows:

[Dukes said] Jackie came and knocked on the door and she wanted to buy some crack and all she had was just ten dollars. And she came in and he gave her . . . the crack and she smoked it and she wanted some - - she wanted some more and he took her to the room and she got — and he told her to get naked [and] he would give her some more crack.

Hernandez said Dukes told her he then made Jacqueline sit on a chair, he strangled her by putting his arm around her neck from behind, and he put a plastic HEB bag over her head, wrapped her body in a carpet, and put her body in a closet. When asked to describe how Dukes made Jacqueline sit on the chair, Hernandez replied that he “tied [her] up . . . with her hands behind her back.”

Hernandez admitted that, on the day Dukes told her he strangled Jacqueline, Hernandez was high on cocaine and heroin. Hernandez also admitted she had used crack and heroin, drank alcohol, and she was angry with Dukes on the day she gave her statement to the police. She conceded she told the police that Mandy Beers, whom she did not like, helped Dukes strangle Jacqueline.

Beers testified that she also worked for Dukes as a prostitute, and she lived in the same house with Dukes and Jacqueline. One evening, when Beers returned to the house from her job at a telemarketing company,<sup>2</sup> Dukes told Beers that Jacqueline was in the bathroom attached to a bedroom and Beers should stay in the bedroom and not let anyone into the room. According to Beers, Dukes then left the house to take his kids somewhere and “find a place to dump” Jacqueline.<sup>3</sup> When Dukes returned, he and Beers carried Jacqueline’s body to Dukes’s car. Beers

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<sup>2</sup> By this time, Beers was no longer a prostitute and had stopped using drugs. However, she continued to give her money to Dukes.

<sup>3</sup> Beers said the children were two teenagers.

said Jacqueline was wrapped in a tan blanket and she could not see Jacqueline's face because it was covered with a black plastic bag.<sup>4</sup>

The next day, Beers returned to the house after work to find Hernandez in the house with Dukes. Beers testified that Dukes told her Jacqueline came to the house for drugs, Dukes asked her to leave, and when she did not leave, he tied her up with her hands behind her back and tape over her mouth. According to Beers, Dukes said that every time one of the kids in the house walked by the room, Jacqueline would make a noise. Dukes quieted Jacqueline by putting his arm around her neck in a choke-hold. Beers stated Dukes put the bag over Jacqueline's head to prevent her bleeding on the floor.

Beers admitted she entered into an immunity agreement to avoid prosecution for helping to move Jacqueline's body, but she denied any involvement in causing Jacqueline's death and she denied strangling or helping to strangle Jacqueline. Beers acknowledged she lied to the police when she said she did not know what happened to Jacqueline, but later, after her attorney obtained immunity for her, she gave another statement in which she admitted what she knew about Jacqueline's death.

The jury found Dukes guilty of capital murder.<sup>5</sup>

### **SUFFICIENCY OF THE EVIDENCE**

Dukes asserts the evidence is insufficient to support the jury's implied finding that he kidnapped Jacqueline.

Under the standard set forth in *Jackson v. Virginia*, 443 U.S. 307, 318-19 (1979), we view the evidence in the light most favorable to the verdict to determine whether any rational trier of

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<sup>4</sup> When later asked whether the bag was cloth or plastic, Beers said it was "a plastic white bag."

<sup>5</sup> The jury was, alternatively, given the choice to find Dukes guilty only of murder.

fact could have found the elements of the offense beyond a reasonable doubt. *Blea v. State*, 483 S.W.3d 29, 33 (Tex. Crim. App. 2016). The “jury is the sole judge of credibility and weight to be attached to the testimony of witnesses.” *Dobbs v. State*, 434 S.W.3d 166, 170 (Tex. Crim. App. 2014). “When the record supports conflicting inferences, we presume that the jury resolved the conflicts in favor of the verdict, and we defer to that determination.” *Id.*

Dukes was convicted of the offense of capital murder. A person commits capital murder if he “commits murder . . . and . . . intentionally commits the murder in the course of committing or attempting to commit kidnapping . . . .” TEX. PEN. CODE ANN. § 19.03 (West Supp. 2015). “A person commits [the] offense [of kidnapping] if he intentionally or knowingly abducts another person.” *Id.* § 20.03(a) (West 2011). The Penal Code defines “abduct” to mean “restrain[ing] a person with intent to prevent [her] liberation by: (A) secreting or holding [her] in a place where [s]he is not likely to be found; or (B) using or threatening to use deadly force.” *Id.* § 20.01(2). To “restrain” “means to restrict a person’s movements without consent, so as to interfere substantially with the person’s liberty, by moving the person from one place to another or by confining the person.” *Id.* § 20.01(1). “Restraint is ‘without consent’ if it is accomplished by . . . force, intimidation, or deception . . . .” *Id.* § 20.01(1)(A).

On appeal, Dukes points to inconsistencies in the testimony to support his contention that he did not kidnap Jacqueline—whether the plastic bag was white or black, whether her body was placed in a bathroom or a closet—and the absence of forensic evidence that Jacqueline’s hands were behind her back when her burnt body was recovered. However, we must defer to the jury’s resolution of any conflicts. In this case, the jury had before it Hernandez’s testimony that Dukes told her he tied Jacqueline up with her hands behind her back. The jury also heard testimony from Beers that Dukes told her he put tape over Jacqueline’s mouth, tied her up with her hands behind

her back, and he quieted Jacqueline by putting his arm around her neck because Jacqueline made noise every time someone walked by the room in which she was kept.

Viewing the evidence in a light most favorable to the jury's implicit finding that Dukes kidnapped Jacqueline, and deferring to the jury as we must, we conclude the evidence is legally sufficient to support Dukes's conviction for capital murder.

### **RIGHT TO A PUBLIC TRIAL**

Dukes asserts the trial court removed members of his family from the courtroom based on their clothing and, in doing so, violated his right to a public trial.

The Sixth Amendment of the United States Constitution guarantees a defendant the right to a public trial in all criminal prosecutions. U.S. CONST. amend. VI; *Lilly v. State*, 365 S.W.3d 321, 328 (Tex. Crim. App. 2012). Violation of a defendant's right to a public trial is structural error that does not require a showing of harm. *Lilly*, 365 S.W.3d at 328. To prevail on a public-trial claim, a defendant must first show the trial was, in fact, closed to the public. *Id.* at 329. "When determining whether a defendant has proved that his trial was closed to the public, the focus is not on whether the defendant can show that someone was actually excluded." *Id.* at 331. "Rather, a reviewing court must look to the totality of the evidence and determine whether the trial court fulfilled its obligation 'to take every reasonable measure to accommodate public attendance at criminal trials.'" *Id.* (citation omitted). If the defendant's trial was closed, the reviewing court then must decide whether the closure was proper. *Id.* at 329.

During trial, the State noticed that three members of Dukes's family were in the courtroom wearing shirts with a photograph of Dukes and his family and the inscription "Free my daddy, Free my pops" on the front and "Show me the evidence" on the back. The State brought the matter to the trial court's attention and asked that the family members be told they could not wear the shirts in the courtroom. Dukes's attorney disagreed, and the trial court excused the jury.

Outside the jury's presence, the State said the shirts were "very nicely done," but argued it was improper to display the shirts to the jury. Defense counsel "concede[d] . . . that the exhibition would be improper before the court." The trial court, after noting that members of the jury glanced over at the people wearing the shirts, then addressed Dukes's family members. The court told the family they were welcome to stay and observe the trial, but the court asked that they not wear the shirts inside the courtroom during trial and with the jury present. The court told the family they could wear the shirts inside the courtroom if the jury was not present. The court asked the family to put on other clothing if they were able to do so or, if not, to turn the shirts inside out. The court then took a brief recess.

After the recess, the trial court made the following comments:

And just to kind of continue the conversation, while the three individuals were in the courtroom just a second ago, I did advise them that they're definitely welcome to turn the shirts inside out if they didn't bring an extra shirt. They're definitely welcome to stay.

Is that correct, Defense?

[Defense counsel: That's correct, Judge.]

And they did hear me say that as I instructed them because there was a response to me.

[Defense counsel: That's correct.]

Okay. And just one more thing for the record. I did count, there was about 12 individuals total outside of the three. So, there were 15 people in the courtroom total and three of them were wearing the red shirts with the imprinting and the pictures and all that.

...

But, again, they're definitely welcome to stay. I know that they're still here. All they got to do is just take the shirts and turn them inside out and they can observe every single thing that happens.

After these comments, trial on the merits re-commenced.

Nothing in the record expressly indicates the three family members actually left the courtroom. If they left the courtroom, nothing in the record indicates whether they left without

returning or left the courtroom and then returned to attend the trial. However, the record clearly shows the trial court encouraged the family members to attend the trial, but asked that they not wear their shirts in the courtroom during the trial while the jury was present. The trial court did not order anyone to leave the courtroom and did not prevent anyone from entering the courtroom. We conclude the record supports our determination that “the trial court fulfilled its obligation ‘to take every reasonable measure to accommodate public attendance at [Dukes’s] criminal trial[.]’” *Lilly*, 365 S.W.3d at 331. Accordingly, Dukes did not satisfy his burden of showing his “trial was, in fact, closed to the public.” *Id.*

### CONCLUSION

We overrule Dukes’s issues on appeal and affirm the trial court’s judgment.

Marialyn Barnard, Justice

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