

**In The**  
***Court of Appeals***  
***Ninth District of Texas at Beaumont***

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**NO. 09-16-00161-CR**

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**MARCOM DWAYNE STAGG, Appellant**

**V.**

**THE STATE OF TEXAS, Appellee**

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**On Appeal from the 252nd District Court**  
**Jefferson County, Texas**  
**Trial Cause No. 14-19871**

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**MEMORANDUM OPINION**

A jury convicted appellant Marcom Dwayne Stagg of aggravated robbery and the trial court sentenced Stagg to fifty years in prison. In two appellate issues, Stagg argues that the evidence is legally insufficient to support his conviction for aggravated robbery. We affirm the trial court’s judgment.

**THE EVIDENCE**

A grand jury indicted Stagg for robbing B.K. with a firearm. The indictment alleged that Stagg “intentionally and knowingly and recklessly cause[d] bodily

injury to [B.K.], by hitting her with a pistol and with his knee and with his hand, and the Defendant did then and there use and exhibit a deadly weapon, to-wit: a firearm, that in the manner and means of its use and intended use is capable of causing serious bodily injury and death[.]” B.K. testified that she was eighty-one years old at the time of trial, and she had owned a liquor store for almost twenty years. B.K. testified that on May 16, 2014, she was awakened by a loud noise that sounded like glass breaking, and as she was attempting to get out of bed, a tall man grabbed her and asked, “Where’s the money?” According to B.K., the man held her so that she could not look at him, and he dragged her into the den where there were two men wearing backpacks. According to B.K., when she refused to walk through broken glass in her bare feet, the man who had been holding her kned her back, struck her head with a metal object, and kicked her leg. B.K. testified that it hurt when the man kned her back and that she still has trouble with her foot from walking across the glass.

B.K. testified that she went into her office where her money bags from the liquor store were located. B.K. explained that the money bags contained approximately \$40,000, including \$20,000 in checks, her check cashing money, and money from the store and the lottery machine. B.K. testified that she opened the drawer where the money bags were located, and when the man leaned down to get

the bags out of the drawer, she saw a pistol in his hand. B.K. further testified that the man hit her head with the pistol, pushed her down, and slammed the office door. At that point, B.K. called the police. B.K. testified that she was not able to identify the robbers, but shortly after the robbery, Stagg's brother, Thomas Stagg ("Thomas"), came to the store, apologized to her, and told her that Stagg was the one who had robbed her.

Deputy Matt Gardener of the Jefferson County Sheriff's Office testified that he responded to the 911 call and observed that B.K. had a bad laceration on the back of her head and a swollen left eye. According to Gardener, B.K. was very upset and angry and she reported that she was struck on her back and had to walk over glass barefooted. Gardener testified that B.K. reported that she was lying in bed when she heard a loud noise and that she was pulled out of her bed and asked where her money was. Gardener explained that B.K. reported that she did not get a good look at the robbers. Gardener testified that while collecting evidence, a camouflage piece of fabric with a name written on it was found on the ground in front of the garage. Gardener further testified that the fabric appeared to be a shoulder strap from a backpack, and the initials B.V.J. were written on the strap.

Deputy Marcus McLellan with the Jefferson County Sheriff's Office testified that he investigated the aggravated robbery and spoke with B.K. and her neighbors.

McLellan explained that he searched the Jefferson County records to find information about the initials on the backpack strap that was found at the scene, and his investigation led him to B.V. Sr., who lived in Jefferson County. McLellan testified that B.V. Sr. confirmed that the backpack strap was his son's and reported that his son lived with his mother, A.C., and Thomas. McLellan explained that after meeting with Thomas, Thomas confessed to his involvement in the aggravated robbery and reported that his brother, Stagg, and Byron Bush were also involved. According to McLellan, Thomas confessed to being the driver and the look-out man. McLellan further testified that Thomas corroborated B.K.'s statement that a firearm was used in the robbery. According to McLellan, a firearm, in the manner and means of its use and intended use, is capable of causing serious bodily injury or death.

McLellan explained that Thomas provided his cell phone number as well as the phone numbers of Stagg and Bush, and McLellan submitted search warrants to the appropriate companies for call detail records and cell tower information for all three phones. According to McLellan, Thomas consented to having his phone searched, and the police extracted a "video recording, apparently, it came on while it was in his pocket and you could hear some individuals talking . . . in the background[,]” and “[t]hey mentioned a reference to TV and you can hear a large amount of change clanging around in bags.” McLellan testified that the items taken

during the robbery included a television and several thousand dollars in the form of checks, paper money, and coins. McLellan also testified that the police found a bandana inside B.K.'s house.

McLellan further testified that during his investigation, he tracked Stagg to his girlfriend's house and spoke with the girlfriend's mother, L.S., who reported that she had assisted Stagg in buying a car. L.S. also told McLellan that, to her knowledge, Stagg never had a job but he had recently come into a large amount of cash. McLellan testified that based on his investigation, he determined that Thomas, Stagg, and Bush were at B.K.'s house the night the robbery occurred. McLellan explained that Thomas and Stagg were charged with aggravated robbery, but Bush was not charged because other than Thomas's statement that Bush was there, there was no corroborating evidence showing that Bush was at B.K.'s house. The corroborating information placing Stagg at the scene included Stagg's cell tower information retrieved from his cell phone and an article of clothing that was recovered inside B.K.'s bedroom that had Stagg's DNA on it.

Detective Larry Gilder Sr. of the Jefferson County Sheriff's Office testified that when he walked B.K. through her house so that she could reenact what had happened, B.K. discovered a blue bandana in B.K.'s bedroom that did not belong to her. Gilder took the bandana as evidence. Sergeant Chad Kolander of the Jefferson

County Sheriff's Office testified that he also assisted in investigating the robbery. Kolander testified that based on the audio recording retrieved from Thomas's cell phone and the consistencies between Thomas's and B.K.'s accounts of how the robbery occurred, he believed Thomas's statement was credible.

Thomas testified that he is a co-defendant in the aggravated robbery and that Stagg is his brother. Thomas explained that he drove Stagg and Bush to B.K.'s house in Nome where Thomas thought they were meeting a cousin. According to Thomas, all three of them went to the back of B.K.'s house where Stagg broke the glass door. Thomas testified that Stagg and Bush went into B.K.'s home in search of money, and when they saw B.K., they grabbed her and asked her where the money was. Thomas explained that when B.K. refused to walk through the glass, Stagg hit her and B.K. fell down. According to Thomas, at that point, he went back to the car because he "didn't want to have no more part to it." Thomas testified that Stagg and Bush got in the car shortly thereafter with a television and money bags. Thomas explained that he drove to his apartment where Stagg and Bush left in another vehicle with the stolen items.

Thomas further testified that Stagg had a firearm in the car, but Thomas did not see Stagg use the firearm in B.K.'s house. However, on cross-examination, Thomas testified that it was Bush who had the gun and not Stagg. Thomas also

testified that Stagg was wearing a blue bandana. Concerning the backpack strap that was found in B.K's driveway, Thomas explained that Stagg had placed the strap over the license plate to hide the plate number. Thomas also testified that the recording the police retrieved from his phone was an audio recording of him and Bush talking to Stagg at Thomas's apartment after the robbery. Thomas testified that he must have accidentally hit the record button because he did not know that his phone was recording. Thomas explained that he told the detectives about the robbery because he felt that it was the right thing to do and because the detectives "already had it mapped out."

T.B., Stagg's cousin, testified that he saw Stagg in Nome on the night the robbery occurred. A.C., Thomas's wife, testified that the night the robbery occurred Stagg had been at her house. A.C. further testified that the backpack strap that was found in B.K's driveway is her son's and the handwriting on the strap is hers. L.S. testified that Stagg was dating her daughter in May 2014, and on May 19, 2014, she bought Stagg a vehicle with \$2500 in cash that Stagg had given her and she put the vehicle in her name. L.S. testified that Stagg may have gotten the money from his stepmother, but Stagg did not have a permanent job and only earned money doing odd jobs.

Miranda Vazquez, an intel analyst with the Houston High Intensity Drug Trafficking Area, testified that she received cell phone records from two cell phones from Detective McLellan and was asked to create a geographical map showing the locations of the cell phone towers that the cell phones hit. McLellan testified that the geographical map of Thomas's and Stagg's cell phones place Thomas and Stagg in Nome shortly before the robbery occurred. According to McLellan, the geographical maps help corroborate Thomas's story that Stagg was with him.

Matthew Petis, a forensic DNA analyst with Sorenson Forensics, testified that he conducted a DNA analysis on the bandana found in B.K.'s bedroom and the buccal swab from Stagg. Petis testified that he compared the DNA profiles from the bandana and the swab from Stagg, and his results showed that the swab from Stagg matched the DNA profile obtained from the bandana. According to Petis, the major contributor of the DNA found on the bandana matches the DNA of Stagg with a frequency of occurrence of 1 in 397,000.

Stagg testified in his defense and claimed he was innocent. Stagg testified that he did not know why Thomas had said that Stagg had gone to Nome, but Stagg thought it was because he had bought a new car. Stagg denied going to his cousin's house in Nome with Thomas the night the robbery occurred and being at B.K.'s house when the robbery occurred. Stagg also denied owning bandanas and claimed



to have bought the bandana for someone. Stagg testified that the last time he saw the bandana he put it around Thomas's rearview mirror. Stagg further testified that he did not own a cell phone when the robbery occurred because he had been saving money for a car. Stagg maintained that he used the money he had saved to buy the car and to bail his girlfriend out of jail. According to Stagg, the case was a conspiracy against him.

### STAGG'S SUFFICIENCY ISSUES

In issue one, Stagg argues that the evidence is legally insufficient to sustain the jury's verdict because the State failed to prove beyond a reasonable doubt that he participated, either as a principal or a party, in the aggravated robbery. According to Stagg, the only evidence tending to connect him to the offense was uncorroborated accomplice testimony. In issue two, Stagg maintains that the evidence is legally insufficient to show that he used or exhibited a firearm during the commission of the robbery.

In reviewing the legal sufficiency of the evidence, we review all the evidence in the light most favorable to the verdict to determine whether any rational fact finder could have found the essential elements of the offense beyond a reasonable doubt. *Jackson v. Virginia*, 443 U.S. 307, 319 (1979); *Hooper v. State*, 214 S.W.3d 9, 13 (Tex. Crim. App. 2007). The fact finder is the ultimate authority on the credibility

of witnesses and the weight to be given their testimony. *Penagraph v. State*, 623 S.W.2d 341, 343 (Tex. Crim. App. [Panel Op.] 1981). We give full deference to the fact finder's responsibility to fairly resolve conflicts in the testimony, to weigh the evidence, and to draw reasonable inferences from basic facts to ultimate facts. *Hooper*, 214 S.W.3d at 13. If the record contains conflicting inferences, we must presume that the fact finder resolved such facts in favor of the verdict and defer to that resolution. *Brooks v. State*, 323 S.W.3d 893, 899 n.13 (Tex. Crim. App. 2010); *Clayton v. State*, 235 S.W.3d 772, 778 (Tex. Crim. App. 2007). We also “determine 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.” *Clayton*, 235 S.W.3d at 778 (quoting *Hooper*, 214 S.W.3d at 16-17).

A person commits aggravated robbery if (1) “in the course of committing theft” and “with intent to obtain or maintain control of the property,” he “intentionally, knowingly, or recklessly causes bodily injury to another;” and (2) “uses or exhibits a deadly weapon[.]” Tex. Penal Code Ann. §§ 29.02(a)(1), 29.03(a)(2) (West 2011). A firearm is a deadly weapon *per se*. *Ex parte Huskins*, 176 S.W.3d 818, 820 (Tex. Crim. App. 2005). “A person is criminally responsible as a party to an offense if the offense is committed by his own conduct, by the conduct of another for which he is criminally responsible, or by both.” Tex. Penal

Code Ann. § 7.01(a) (West 2011). A person is criminally responsible for an offense committed by another when, “acting with intent to promote or assist the commission of the offense, he solicits, encourages, directs, aids, or attempts to aid the other person to commit the offense[.]” *Id.* § 7.02(a)(2) (West 2011). “Each party to an offense may be charged with commission of the offense.” *Id.* § 7.01(b) (West 2011). “Evidence is sufficient to convict under the law of parties where the defendant is physically present at the commission of the offense and encourages its commission by words or other agreement.” *Ransom v. State*, 920 S.W.2d 288, 302 (Tex. Crim. App. 1996) (op. on reh’g). The jury may consider ““events occurring before, during and after the commission of the offense, and may rely on actions of the defendant which show an understanding and common design to do the prohibited act.”” *Id.* (quoting *Cordova v. State*, 698 S.W.2d 107, 111 (Tex. Crim. App. 1985)). “[C]ircumstantial evidence may be used to prove party status.” *Id.*

On appeal, Stagg maintains that the evidence failed to establish that he was present during the robbery or that he committed the robbery. The jury heard evidence from Thomas that Stagg participated in the robbery and that Stagg struck B.K. The jury also heard corroborating evidence that Stagg was with Thomas and in Nome the night the robbery occurred. The jury heard testimony from a forensic DNA analyst that Stagg’s DNA matched the DNA on the bandana that was found in B.K.’s

bedroom. The jury also heard evidence that Stagg came into a large amount of cash shortly after the robbery occurred.

Based on the events that occurred before, during, and after the offense, as well as the corroborating evidence placing Stagg at the scene, the jury could reasonably conclude that Stagg was criminally responsible as a party to the offense. *See* Tex. Penal Code Ann. §§ 7.01(a), 7.02(a)(2); *see also Ransom*, 920 S.W.2d at 302. Viewing all the evidence in the light most favorable to the verdict, the jury could conclude, beyond a reasonable doubt, that Stagg committed the offense of aggravated robbery. *See Jackson*, 443 U.S. at 318-19; *Hooper*, 214 S.W.3d at 13; *see also* Tex. Penal Code Ann. § 7.01(b). We overrule issue one.

In issue two, Stagg maintains that the evidence is legally insufficient to show that he used or exhibited a firearm during the commission of the robbery. According to Stagg, no firearm was recovered and the mere testimony that the complaining witness saw a “pistol,” is insufficient to prove the element of a firearm as alleged by the State. Because the indictment specified that the deadly weapon used or exhibited was a firearm, the State was required to prove that a firearm was used or exhibited during the robbery. *See Curry v. State*, 30 S.W.3d 394, 405 (Tex. Crim. App. 2000).

To be legally sufficient to sustain a deadly weapon finding, the evidence must demonstrate that (1) the object meets the statutory definition of a deadly weapon, (2)

the deadly weapon was used or exhibited during the transaction for which the felony conviction was obtained, and (3) someone was put in actual danger. *Drichas v. State*, 175 S.W.3d 795, 798 (Tex. Crim. App. 2005). A deadly weapon includes “a firearm or anything manifestly designed, made, or adapted for the purpose of inflicting death or serious bodily injury[.]” Tex. Penal Code Ann. § 1.07(17) (West Supp. 2016). In determining whether the evidence is sufficient to support a conviction, we are required to defer to the jury’s credibility and weight determinations because the jury is the sole judge of the witnesses’ credibility. *Brooks*, 323 S.W.3d at 899, 912. The lack of physical evidence, such as the gun used by Stagg, is simply a factor for the jury to consider in weighing the evidence presented by the State. *See Lee v. State*, 176 S.W.3d 452, 458 (Tex. App.—Houston [1st Dist.] 2004), *aff’d*, 206 S.W.3d 620 (Tex. Crim. App. 2006).

Thomas testified that Stagg had a firearm in the car, but he did not see Stagg use the firearm in B.K.’s house. However, Thomas also testified that he left and went to the car after he saw Stagg strike B.K. for refusing to walk through the glass. B.K. testified that she refused to walk through the glass in the den, and she was in the office getting the money bags when she saw a pistol in the man’s hand. B.K. further testified that the man hit her head with the pistol. We further note that during cross-examination, Thomas testified that it was Bush who had the gun and not Stagg.

McLellan testified that Thomas corroborated B.K.'s statement that a firearm was used in the robbery. McLellan further testified that a firearm, in the manner and means of its use and intended use, is capable of causing serious bodily injury or death. Gardener testified that he observed that B.K. had a bad laceration on the back of her head.

Viewing all the evidence in the light most favorable to the verdict, the jury could have reasonably concluded that Stagg used or exhibited a deadly weapon during the commission of the offense. *See Jackson*, 443 U.S. at 318-19; *see also Hooper*, 214 S.W.3d at 13. We overrule issue two. Having overruled both of Stagg's issues, we affirm the trial court's judgment.

AFFIRMED.

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STEVE McKEITHEN  
Chief Justice

Submitted on May 16, 2017  
Opinion Delivered June 21, 2017  
Do Not Publish

Before McKeithen, C.J., Horton and Johnson, JJ.