

In The
Court of Appeals
Ninth District of Texas at Beaumont

NO. 09-16-00262-CR

BENJAMIN ROY DOMINGUE, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the Criminal District Court
Jefferson County, Texas
Trial Cause No. 15-22894

MEMORANDUM OPINION

Benjamin Roy Domingue appeals from a final judgment, based on a jury's verdict, finding him guilty of aggravated kidnapping. In the four issues Domingue has raised in his appeal, he argues: (1) the evidence is not legally sufficient to prove that he intentionally restrained the minor he was charged with kidnapping; (2) the evidence is not legally sufficient to prove that he knowingly restrained the minor he was charged with kidnapping; (3) the trial court erred by denying his motion asking for a directed verdict of not guilty; and (4) the evidence before the jury raised an

issue requiring the trial court to allow the jury to consider whether he committed the lesser-included offense of ordinary kidnapping. For the reasons discussed below, we conclude that Domingue is not entitled to any of the relief he has requested in his appeal.

Background

In June 2015, Domingue decided to visit Bill and Beverly Jones,¹ who have a seventeen-month-old daughter,ayah. The testimony before the jury indicates that Domingue had visited the Joneses several times before the events occurred that led to his indictment. After Domingue arrived at the Joneses' in June, he stayed with them for several days. Bill testified during the trial, and he stated that Domingue did not seem to have anything wrong with him until the day before he left. Bill explained, it was "just a normal visit[,]” and Domingue was not overly attentive toayah. However, Bill stated that on the day before Domingue left, he became quiet and standoffish.

¹ To protect the privacy of the minor that Domingue was found guilty of kidnapping, and her parents, we identify them by using aliases. *See* Tex. Const. art. I, § 30 (granting crime victims “the right to be treated with fairness and with respect for the victim’s dignity and privacy throughout the criminal justice process[.]” Nonetheless, the facts presented in the trial established that Beverly Jones and Benjamin Domingue are related.

The kidnapping occurred on the morning of the sixth day of Domingue's visit. According to Bill, when Domingue came into the room where Bill was preparing breakfast, Domingue "started saying stuff to [Mayah] in Spanish[.]" Suddenly, Domingue "picked [Mayah] up" and walked out the front door. Bill stated that he did not become alarmed until he saw Domingue driving off in a truck without placing Mayah in a car seat. At that point, Bill took his wife's truck, followed Domingue, and he attempted to get Domingue to stop. When Domingue refused, Bill realized that "[Domingue] wasn't planning on giving me my baby back." After Domingue drove onto the highway, Bill attempted to get in front of Domingue's truck to slow him down.

Eventually the trucks spun out, collided with objects on the side of the highway, and came to a stop. Immediately after his truck stopped, Bill jumped out, ran alongside Domingue's truck, and attempted to "bust the window to get my daughter." Before Bill could break the truck's window, "[Domingue] put his hand down and he grabbed my daughter and he pulled this knife out on her and he was saying, '[t]his is my daughter. This is my daughter.'" Bill described the knife that he saw as a black knife, which looked "like a box cutter or whatever."

Shortly thereafter, emergency responders came to the scene, and they eventually persuaded Domingue to hand Mayah over to them. When asked by the

prosecutor whether he gave Domingue permission to take Mayah, Bill answered: “No, sir, never, never.”

One of the firefighters who was present after Domingue’s and Bill’s trucks had stopped testified in Domingue’s trial. The firefighter stated that Domingue told him when he spoke to him at the scene that Mayah was his daughter. According to the firefighter, Domingue said that he took Mayah to protect her from Bill.

Domingue testified in his own defense, explaining that he was a teacher. According to Domingue, he had planned to visit with various relatives over the summer during the summer break. Domingue stated that the day before he decided to leave the Joneses’ house, he noticed that everyone there was behaving strangely. He also noticed that Mayah “had been bawling, [and had] this exhausted look in her -- in her and her face.” According to Domingue, because he was upset, he had not gotten any sleep the night before he left. He also explained that he thought that Mayah screamed in the mornings in a way that sounded different from that of a baby who was crying. Domingue testified that he “believe[s] that [he is] the father of the child” because “she looks like me, has my mannerisms. She strikes me as my own DNA.” According to Domingue, based on the fact that “[Mayah] was grieving for the duration that she was grieving repeatedly, morning after morning[,]” he believed that Mayah was being physically abused. Domingue testified that on the morning of

the sixth day of his visit, he decided “it was time for me to move on.” During trial, Domingue stated that he was planning to take Mayah to a nearby hospital when he left the Joneses’ home. When asked why he took Mayah, Domingue answered: “I was assuming lawful control of my daughter at that point.” Domingue further testified that he took Mayah “to protect her from an imminent harm.”

On cross-examination, Domingue agreed that on the day he took Mayah from the Joneses’ home, he did not tell anyone where he was going. And, he testified that he never asked anyone for permission to take Mayah with him. According to Domingue, when he put Mayah in his truck, he looked at her, told her that he was her father, and that her name was Jessica, which is a name Domingue selected for Mayah after he searched the internet that morning. Domingue explained that after he was arrested, but before his trial, he learned that “if the actor’s intent is to assume lawful control of the victim, then that is a defense [to kidnapping] in the court of law.”

A psychiatrist, Dr. Edward Gripon, was called by Domingue to testify in his defense. Dr. Gripon testified that in November 2015, he examined Domingue to determine whether he was competent to stand trial. Following the exam, Dr. Gripon determined that Domingue was competent for trial, and he agreed that his report regarding Domingue’s examination states: “I see no evidence of any current mental

health illness.” Dr. Gripon’s report on Domingue’s competency examination affirms: “[Domingue] has no thought disorder and his thought process was free of hallucinations, illusions, or delusions.”

In April 2016, Dr. Gripon examined Domingue a second time to evaluate whether he was sane. Before completing this evaluation, Dr. Gripon obtained the offense reports regarding the kidnapping and he was given information about Domingue by some of Domingue’s family members. Based on this additional information, Dr. Gripon concluded that Domingue suffers from a “delusional disorder because of some false beliefs that he has that are fixed that are relatively narrow, and they’re what we call non[-]bizarre delusions in that they could be true. They’re not just so outlandish that there couldn’t be some truth to it, but they don’t seem to be true in this particular case.” According to Dr. Gripon, Domingue’s views regarding Mayah’s circumstances were irrational because they “did not seem at all to me to be supported by any type of fact.” Nonetheless, Dr. Gripon thought that Domingue was sincere in his beliefs based on the fact that his story never wavered. Dr. Gripon expressed his opinion that Domingue’s delusional disorder “influenced his actions, in fact, directed it for the most part. He was reacting to these false beliefs.” Dr. Gripon added: “Domingue believes exactly what he’s told others over time.”

On cross-examination, Dr. Gripon agreed that he had not obtained Domingue’s mental health records from Harris County, a county that Dr. Gripon acknowledged had records indicating that Domingue had been examined previously for what Dr. Gripon stated he believed to be an unrelated diagnosis. Dr. Gripon also agreed that he did not obtain documents regarding Domingue’s work history or documents verifying Domingue’s claim that he held a master’s degree and taught at a junior college. Dr. Gripon explained that a person can be delusional, and yet know that they are doing something wrong. Nonetheless, Dr. Gripon testified that in his opinion as a psychiatrist, and based on reasonable psychiatric probability, “[Domingue] did not realize that [what he had done] was wrong.”

Standard of Review—Sufficiency Issues

In his first three issues, Domingue argues that the evidence admitted in his trial is insufficient to support the jury’s conclusion that he committed the crime for which he was convicted, aggravated kidnapping.² We review the sufficiency of the evidence to support a conviction under the standard set forth in *Jackson v. Virginia*, 443 U.S. 307, 319 (1979). *See Brooks v. State*, 323 S.W.3d 893, 895 (Tex. Crim.

² Although the trial court instructed the jury on Domingue’s defense of insanity, he has not challenged the jury’s failure to acquit him based on this defense. Consequently, we have not addressed Domingue’s insanity defense directly in resolving the issues that Domingue has raised in his brief.

App. 2010). Under that standard, we view all of the evidence “in the light most favorable to the verdict and determine whether, based on that evidence and any reasonable inferences therefrom, a rational juror could have found the essential elements of the crime beyond a reasonable doubt.” *Anderson v. State*, 416 S.W.3d 884, 888 (Tex. Crim. App. 2013) (citing *Jackson*, 443 U.S. at 318-19). In our review, we must evaluate all the evidence in the record, whether direct, circumstantial, admissible, or inadmissible. *Dewberry v. State*, 4 S.W.3d 735, 740 (Tex. Crim. App. 1999).

In applying this standard, we must keep in mind that “[t]he jury is the sole judge of credibility and weight to be attached to the testimony of witnesses.” *Temple v. State*, 390 S.W.3d 341, 360 (Tex. Crim. App. 2013) (citing *Jackson*, 443 U.S. at 319). In its role as the factfinder, the jury may choose to believe all, some, or none of the testimony that is presented to the jury by the parties. *Chambers v. State*, 805 S.W.2d 459, 461 (Tex. Crim. App. 1991). Additionally, the jury may draw multiple inferences from the evidence that is before it if the inferences it has drawn from such evidence are reasonable and supported by the evidence presented during the defendant’s trial. *Temple*, 390 S.W.3d at 360. If the record supports conflicting inferences, we must presume the jury resolved such conflicts in favor of the jury’s

verdict, and we must defer to the jury's resolution of the dispute when its resolution is supported by the evidence. *Id.*

When reviewing the jury's finding of guilt to resolve a defendant's challenge to the sufficiency of the evidence, we evaluate whether the evidence establishes that the defendant committed the essential elements of the crime based on the elements that would appear in a hypothetically correct jury charge—that is, “one that accurately sets out the law, is authorized by the indictment, does not unnecessarily increase the State's burden of proof or unnecessarily restrict the State's theories of liability, and adequately describes the particular offense for which the defendant was tried.” *Malik v. State*, 953 S.W.2d 234, 240 (Tex. Crim. App. 1997). “Under this standard, evidence may be legally insufficient when the record contains either no evidence of an essential element, merely a modicum of evidence of one element, or if it conclusively establishes a reasonable doubt.” *Britain v. State*, 412 S.W.3d 518, 520 (Tex. Crim. App. 2013) (citing *Jackson*, 443 U.S. at 320).

Both direct and circumstantial evidence may be equally probative of an actor's guilt, and “circumstantial evidence alone can be sufficient to establish guilt.” *Temple*, 390 S.W.3d at 359 (quoting *Hooper v. State*, 214 S.W.3d 9, 13 (Tex. Crim. App. 2007)). In cases where the jury's verdict rests on circumstantial evidence, each fact need not point directly and independently to the guilt of the defendant so long

as the combined and cumulative force of all the incriminating circumstances warrants the conclusion that the defendant is guilty. *Id.* (quoting *Johnson v. State*, 871 S.W.2d 183, 186 (Tex. Crim. App. 1993)); *Hooper*, 214 S.W.3d at 13. “After giving proper deference to the factfinder’s role, we will uphold the verdict unless a rational factfinder must have had reasonable doubt as to any essential element.” *Laster v. State*, 275 S.W.3d 512, 518 (Tex. Crim. App. 2009).

Generally, a jury is allowed to infer what a defendant intended from circumstantial evidence based on the defendant’s acts, his words, and his conduct. *Guevara v. State*, 152 S.W.3d 45, 50 (Tex. Crim. App. 2004). We review arguments complaining that the circumstantial evidence was insufficient to establish that a defendant intended to or knowingly committed a crime under the same standard that we use to review whether circumstantial evidence was sufficient to establish that the defendant committed all of the other elements of the crime. *Laster*, 275 S.W.3d at 521. Significantly, “[c]ircumstantial evidence is as probative as direct evidence in establishing [a defendant’s guilt], 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).

The jury is the sole judge of the credibility of the witnesses and the weight that should be afforded to the testimony that is presented during a trial. *Montgomery*

v. State, 369 S.W.3d 188, 192 (Tex. Crim. App. 2012). In a jury trial, the jury has the responsibility to decide what testimony it finds believable and to decide what weight it wants to give that testimony. *See Penagraph v. State*, 623 S.W.2d 341, 343 (Tex. Crim. App. 1981). In resolving a defendant’s claim alleging that the evidence was insufficient to support the jury’s verdict, our resolution must be deferential to the responsibility that juries are given to resolve conflicts in the evidence, to weigh the evidence, and to draw reasonable inferences in reaching a verdict. *See Hooper*, 214 S.W.3d at 13. In our review, we are tasked with determining whether the inferences that the jury made to reach its verdict “are reasonable based upon the combined and cumulative force of all the evidence[,]” when viewing the evidence in the light that most favors the verdict. *Id.* at 16-17. Since Domingue’s issues include an issue challenging the trial court’s ruling on his motion for directed verdict, we note that this type of challenge is also treated as a challenge to the legal sufficiency of the evidence. *Williams v. State*, 937 S.W.2d 479, 482 (Tex. Crim. App. 1996).

Domingue’s indictment charged him with aggravated kidnapping. Based on the language in the indictment, the State was required to prove that Domingue intentionally or knowingly abducted Mayah with the intent to terrorize Bill by threatening to use a knife that could be used in a manner that was capable of causing death and serious bodily injury. *See Tex. Penal Code Ann. § 20.04* (West Supp.

2017); *see also Laster*, 275 S.W.3d at 521. The term “abduct” means “to restrain a person with intent to prevent [her] liberation by secreting or holding [her] in a place where [she] is not likely to be found, or by using or threatening to use deadly force.” Tex. Penal Code Ann. § 20.01(2) (West 2011). Consequently, the term “abduct” has two elements: (1) the defendant must have restrained another, which is the conduct that is required; and (2) the defendant must have had the specific intent to prevent liberation, which is the intention or knowledge of wrongdoing component of the crime. *Id.*

Under the Penal Code, the term “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) (West 2011). A person’s restraint is “without consent” when accomplished by force, intimidation, deception, or any means if the victim is less than fourteen years old and the victim’s parent did not acquiesce to the minor being moved or confined. *Id.*

One way a person may commit aggravated kidnapping is if he intentionally or knowingly abducts another and he uses or exhibits a deadly weapon during the commission of the offense. *Id.* § 20.04(b) (West 2011); *Laster*, 275 S.W.3d at 521. Another way an ordinary kidnapping may become an aggravated kidnapping is if the

defendant intentionally or knowingly abducts another with the intent to terrorize a third person. Tex. Penal Code Ann. § 20.04(a)(5) (West 2011). The indictment in Domingue’s case identifies both of these factors as aggravating factors, which elevated his crime to aggravated kidnapping.

Analysis—Issues One-Three

Domingue’s brief combines his arguments on his first three issues in one section of his brief. While Domingue concedes that the evidence before the jury allowed the jury to find he restrained Mayah, he argues that the State failed to prove he did so intentionally and knowingly for the purpose of terrorizing Bill. According to Domingue, Dr. Gripon’s testimony about his mental illness was undisputed, suggesting the jury could not rationally have disagreed with the doctor’s conclusion that Domingue suffered from a mental illness that caused him to believe that Mayah was his child and that he was acting to protect her from an imminent risk of harm. While Domingue acknowledges that the jury could have inferred that Bill feared for Mayah’s safety, he suggests that Bill’s state of mind was based upon what Bill believed was occurring, rather than what actually occurred—“that he [,Domingue,] was providing assistance to his child.” Domingue contends that given his mental illness, the jury could not rationally infer that he intentionally or knowingly abducted

Mayah with the intent to terrorize Bill or that he intentionally or knowingly used or threatened to use the knife while Mayah was in his truck.

The word “terrorize” is not defined by the Penal Code. Generally, we look to commonly used dictionaries to determine the meaning of a word when it is not defined in a statute. *See Olivas v. State*, 203 S.W.3d 341, 345-46 (Tex. Crim. App. 2006). “Terrorize” has the following commonly used meanings: “1 : to fill with terror or anxiety : SCARE 2 : to coerce by threat or violence[.]” WEBSTER’S THIRD NEW INTERNATIONAL DICTIONARY 2361 (2002). The term has also been defined to mean “create and maintain a state of extreme fear and distress in (someone); fill with terror[.]” NEW OXFORD AMERICAN DICTIONARY 1792 (3d ed. 2010). A jury may infer that one person intended to terrorize another based on the defendant’s acts. *Rogers v. State*, 687 S.W.2d 337, 342 (Tex. Crim. App. 1985).

During the trial, Bill testified that Domingue held a knife that looked like a box cutter “out on [Mayah]” while Bill was attempting to break the window on Domingue’s truck to rescue his child. Domingue’s testimony is not significantly different, as he told the jury that Bill stopped and walked away when “I showed him the blade[.]” From this testimony, the jury could reasonably infer that Domingue intentionally or knowingly prevented Mayah from being liberated by causing Bill to

fear that Domingue would injure Mayah with a knife by exhibiting the knife during the commission of the offense.

While Texas has not recognized diminished capacity as an alternative to insanity as an affirmative defense, Domingue suggests that the evidence regarding his mental state was relevant to whether he could form the requisite intent to commit an aggravated kidnapping. *See Jackson v. State*, 160 S.W.3d 568, 573-74 (Tex. Crim. App. 2005) (recognizing that evidence of mental illness may be used in an effort to negate the *mens-rea* element of a crime). During the trial, Domingue presented evidence of a claimed mental illness. He suggested to the jury that he could not have formed the *mens-rea* required to prove aggravated kidnapping because he believed that the child was his and that she was in imminent danger, such that he could not have intentionally or knowingly abducted Mayah or intentionally or knowingly done so to terrorize Bill. Nonetheless, the jury rejected this argument, and found that he abducted Mayah by knowingly and intentionally terrorizing Bill. *See Montgomery*, 369 S.W.3d at 192; *Penagraph*, 623 S.W.2d at 343.

In reviewing the jury's verdict, we view the evidence in the light that most favors the verdict. *See Hooper*, 214 S.W.3d at 16-17. While Dr. Gripon's testimony was the only medical testimony before the jury, the record contains no medical testimony showing that Domingue had a history of delusional disorders before he

took Mayah from the Joneses' home. Additionally, the jury could have reasonably inferred that Domingue engaged in some degree of planning before kidnapping Mayah, as he did research on the internet to select the name Jessica before taking the child. Although Domingue maintained throughout the trial that he was Mayah's father, the jury could reasonably have believed that he maintained that belief because he believed abandoning the claim would worsen his chances of an acquittal. The jury could have also inferred that Domingue researched what the State would be required to prove to establish that he kidnapped Mayah before he saw Dr. Gripon, and that Domingue thought that maintaining that he was Mayah's father would improve the chances that a doctor might diagnose him as being insane. Since Dr. Gripon's testimony showed that his opinions were based on his subjective belief that Domingue had been truthful with him, the jury could have also reasonably chosen to reject Dr. Gripon's diagnosis, and concluded that Domingue realized when he took Mayah that what he did was wrong. *Id.*

While expert testimony may assist the jury in determining an issue, an expert's testimony is not conclusive on the jury's verdict. *See Graham v. State*, 566 S.W.2d 941, 949 (Tex. Crim. App. 1978) (recognizing that the "ultimate issue of criminal responsibility is beyond the province of expert witnesses"). Based on the testimony admitted in the trial, we conclude the jury could have reasonably inferred that

Domingue knew that society considered his conduct to be against the law even if he thought that his conduct was morally justified. *See Ruffin v. State*, 270 S.W.3d 586, 592 (Tex. Crim. App. 2008).

By finding Domingue guilty of aggravated kidnapping, the jury made a positive judgment that Domingue's mental status was not sufficiently diminished to the extent that he could not have formed the *mens-rea* that is required to be shown to establish that a defendant committed aggravated kidnapping. Viewing the evidence in the light most favorable to the jury's verdict, we conclude the evidence authorized the jury to find Domingue guilty on each of the elements of the crime of aggravated kidnapping beyond a reasonable doubt. Issues one through three are overruled.

Issue Four—Lesser-Included Offense

Domingue also complains in his appeal that the trial court erred when it denied his request asking that the jury be allowed to consider whether he committed the lesser-included offense of ordinary kidnapping. During the charge conference, Domingue argued the evidence supported instructing the jury on ordinary kidnapping. To support his argument, Domingue's attorney pointed to Domingue's testimony, and he suggested that Domingue only showed the knife to Bill and had

not, by that display, threatened to use the knife. The trial court denied Domingue's request.

We apply a two-step analysis to determine whether a trial court should have instructed the jury on a lesser-included offense. *See Roy v. State*, 509 S.W.3d 315, 317 (Tex. Crim. App. 2017). Step one of the analysis requires evaluating whether the lesser-included offense the defendant suggests should have been submitted constitutes a lesser-included offense of the charged offense. *Id.* Step two of the analysis requires a review of the evidence admitted in the trial to decide whether the jury could have rationally found the defendant guilty of only the lesser-included offense under the evidence the jury considered during the defendant's trial. *Id.*

Because proving the elements of the crime of ordinary kidnapping is within the proof that is required to establish that a defendant committed an aggravated kidnapping, the crime of kidnapping is generally considered to be a lesser-included offense of aggravated kidnapping. *Lavarry v. State*, 936 S.W.2d 690, 694 (Tex. App.—Dallas 1996, pet. ref'd); *see also* Tex. Code Crim. Proc. Ann. art. 37.09(1) (West 2006). In its brief, the State agrees with Domingue that: “[K]idnapping is a lesser-included offense of aggravated kidnapping.” Nonetheless, the State argues that Domingue failed to establish step two of the analysis. Consequently, we turn to

whether the jury could have rationally convicted Domingue only of ordinary kidnapping based on the testimony that was admitted during Domingue's trial.

During the trial, Domingue testified:

Q. Well, let me ask you specifically: Did you hold that [referencing a knife marked as an exhibit], did you hold this up to the child --

A. No, sir.

Q. -- as he described?

A. No, sir.

Q. Okay.

A. Never.

Q. Did you ever open this?

A. Yes, sir.

Q. Okay. And how did you use it?

A. After driving down 73 and he ran us off the road, he ran up to the driver's side window and he was beating on the driver's side window. I put my arm on the window to prevent him from breaking in to the vehicle. The knife was in my left pocket. I reached in to my left pocket, I pulled the knife out, and I opened the blade and I told him, "This is my daughter, and you can't" --

Q. You can't have her?

A. "You can't hurt her anymore."

Q. Okay.

A. And he backed away, and at that point she started crying. Before then she hadn't cried.

Q. Okay.

A. And --

Q. So, hold on. Okay. So, you said it was in your left pocket. Your left hand is what's on the window?

A. Is on the window.

Q. Okay. So, you reached to your left pocket?

A. With my right hand.

Q. Okay. And you pulled the knife out?

A. (Witness nods head up and down.)

Q. And you -- did you in any way make a move to your right?

A. No, sir. The child was in the seat belt still, in the passenger's seat --

Q. Okay.

A. -- just observing the whole situation.

Q. Okay. So -- so, when he came, was the child in your arms?

A. No, sir, not until he moved away. After he moved away, I put the knife away. I put the knife back in my pocket. He moved away after he saw the knife and I had my arm up and I was screaming. At that point I was --

Q. What were you screaming?

A. I was screaming. I screamed, "This is my child. You can't rape her anymore. She -- this is" -- I told him to, "Get away. This is my child. You can't hurt her. You can't rape her anymore." And at that point he stopped. He saw -- I showed him the blade and he stopped and he walked away. I put the blade up, and she started screaming at that point. I undid her seat belt. I picked her up and I set her on my lap and she rested her head on my chest and she stopped crying.

One of the police officers who came to the scene where the trucks came to a stop testified that he found a "black folding box-cutter-style knife" in Domingue's pocket when he searched him, and that the knife was capable of causing serious bodily injury or death. Bill testified that while he was punching the window of Domingue's truck, Domingue "pulled the knife to [Mayah's] throat[.]" While Domingue denied holding the knife up to Mayah's throat, Domingue admitted that he pulled the knife out of his pocket, opened the blade, showed the blade to Bill, and that he returned the knife to his pocket after Bill moved away from his truck.

The testimony of both Bill and Domingue about Domingue's use of the knife occurred in the course of Mayah's kidnapping. Additionally, both accounts involved the threatened use of a deadly weapon. Based on the evidence before the jury in Domingue's trial, no jury could have rationally found that Domingue did not intend to terrorize Bill by using the knife based on either of the accounts about how Domingue used the knife in the course of the kidnapping. Consequently, we agree

with the trial court that the evidence before the jury did not authorize instructing the jury on ordinary kidnapping. We overrule issue four.

Having overruled all of Domingue's issues, we affirm the trial court's judgment.

AFFIRMED.

HOLLIS HORTON
Justice

Submitted on February 27, 2018
Opinion Delivered May 2, 2018
Do Not Publish

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