NUMBER 13-16-00022-CR

COURT OF APPEALS

THIRTEENTH DISTRICT OF TEXAS

CORPUS CHRISTI – EDINBURG

ROBERT DANIEL RODRIGUEZ, **Appellant,**

v.

THE STATE OF TEXAS, **Appellee.**

On appeal from the 12th District Court of Walker County, Texas.

MEMORANDUM OPINION

Before Justices Contreras, Benavides, and Longoria
Memorandum Opinion by Justice Contreras

Appellant Robert Daniel Rodriguez was convicted of aggravated kidnapping, a first-degree felony, *see* TEX. PENAL CODE ANN. § 20.04 (West, Westlaw through 2015 R.S.), and the trial court sentenced him to thirty years' imprisonment. By one issue on appeal, Rodriguez argues that the trial court erred in not finding that he voluntarily

released the victim in a safe place. *See id.* § 20.04(d). We affirm.[1]

I. BACKGROUND

An indictment returned by a Walker County grand jury alleged that Rodriguez, on or about September 13, 2013, intentionally or knowingly abducted L.F. with the intent to violate or abuse her sexually. *See id.* § 20.04(a)(4).

At trial, L.F. testified that she was twenty years old and a student at Texas State University at the time of the alleged offense. Late in the evening of September 12, 2013, she drove alone from San Marcos to Huntsville to meet her boyfriend and other friends at a nightclub. After approximately three hours of driving, she arrived at about 12:30 a.m. and "quickly" consumed five shots of tequila "[b]ecause everyone had been there for hours and they wanted me to catch up." She stated she did not usually drink alcohol.

When the nightclub closed at around 2:00 a.m., she walked out with her boyfriend. The two then split up and L.F. walked to her car, when she realized she did not have her keys, wallet, or phone.[2] The next thing she remembered was: "I was in a car with a complete stranger and I didn't know why." According to L.F., the stranger identified himself as "Alex." L.F. testified that she told "Alex" to let her out of the car and to take her to her boyfriend's apartment.

She eventually realized something was wrong and started "yelling for him to stop and beating on the dashboard." According to L.F., "Alex" then electrocuted her with a taser and asked "Are you going to be a good girl now?" L.F. stated that, a short time later,

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[1] This appeal was transferred from the Tenth Court of Appeals pursuant to a docket equalization order issued by the Texas Supreme Court. *See* TEX. GOV'T CODE ANN. § 73.001 (West, Westlaw through 2015 R.S.).

[2] L.F. stated that she later realized she had left her phone and wallet in her car and had given her keys to her boyfriend.

"Alex" stopped the car, then went over to the passenger side and opened her door. When she tried to get out, he grabbed her arm and pulled her back into the seat. He then sexually assaulted her. L.F. stated that "Alex" then "zipped his pants up and got into the car and started driving." Less than ten minutes later, when L.F. "started to recognize" the surroundings, she "started opening the door and he stopped." She exited the car and ran to her boyfriend's apartment, which was about "three blocks away." She later clarified that she had "opened the door when he was still driving." On cross-examination, L.F. stated that "Alex" was driving towards her boyfriend's apartment at the time that she got out of the car. She reiterated that he was "going slow but he was still driving" when she exited.

The jury found Rodriguez guilty of aggravated kidnapping. At the punishment phase, L.F. stated that she got out of Rodriguez's car when he "slowed down to make a turn." She stated: "I felt sure that if I wouldn't get out, I wouldn't make it till the next day." She said that it was dark outside and there were no people around at the time she exited the car. On cross-examination, defense counsel played a video recording of a statement L.F. made to police on the night in question, a transcript of which is part of the record before this Court. In the statement, L.F. recounted as follows:

> He penetrated me and then after all of that he brought me back to where I wanted to go which was [my boyfriend]'s because I kept giving him the address and he dropped me off then—and I remember seeing 16th Street or something. So it was just like I want to get out of here. I started opening the door while he's driving, so he just let me out and I ran to [my boyfriend]'s apartment, which is on 19th Street and it was probably like past 4:00 a.m. by that time.

At the punishment phase, L.F. testified that this statement is correct but clarified that "he never pulled over. When I said that he let me out, it was more that he didn't pull me back in then." She stated she could not see her boyfriend's apartment from where she was

when she exited the car.

The jury found Rodriguez guilty and he elected to have the trial court assess punishment. Rodriguez testified at the punishment phase that his sexual encounter with L.F. was consensual and he denied tasing her or keeping her in his car against her will. He stated: "When I first came in contact with her, and she asked me if I could help her get into her car, she was kind of angry with her boyfriend for leaving her, and for taking off with her keys, you know." According to Rodriguez, at some point, he stopped at a stop sign and L.F. said "This is good. . . . He stays three blocks away. I can walk from here." Rodriguez testified: "And after that, I asked her, you know, if she was sure and she said, 'Yes, that's fine.' She looked at me and said, 'Thank you' and got out of the vehicle."

The trial court declined to find that Rodriguez had voluntarily released L.F. in a safe place, *see id*., and it sentenced Rodriguez to thirty years' imprisonment. This appeal followed.

II. DISCUSSION

A. Standard of Review

Rodriguez argues that the evidence was factually insufficient to support the trial court's finding that he did not voluntarily release L.F. in a safe place. *See id.*; *Matlock v. State*, 392 S.W.3d 662, 670 (Tex. Crim. App. 2013) (noting that a challenge to the evidence supporting a finding on an issue for which the defendant had the burden of proof, such as the safe-place-release defense, may be made on legal or factual sufficiency grounds). In a factual-sufficiency review of a rejected affirmative defense, we consider the entire body of evidence in a neutral light to determine whether the finding was so against the great weight and preponderance of that evidence as to be manifestly

unjust. *Id*. at 671. We may not substitute our judgment in place of the fact-finder's assessment of the weight and credibility of the witnesses' testimony. *Id*.

B. Applicable Law

At the punishment stage of a trial, the defendant in an aggravated kidnapping case "may raise the issue as to whether he voluntarily released the victim in a safe place." TEX. PENAL CODE ANN. § 20.04(d). If the defendant proves that issue in the affirmative by a preponderance of the evidence, the offense, normally a first-degree felony, is instead a second-degree felony. *Id.* § 20.04(c), (d).

Section 20.04(d) requires proof that the accused "performed some overt and affirmative act which brought home to his victim that she had been fully released from captivity." *Dominguez v. State*, 467 S.W.3d 521, 527 (Tex. App.—San Antonio 2015, pet. ref'd); *Harrell v. State*, 65 S.W.3d 768, 772 (Tex. App.—Houston [14th Dist.] 2001, pet. ref'd). "That release must have occurred in a place and manner which realistically conveyed [to the victim] that she was then freed from captivity and in circumstances and surroundings wherein aid was readily available." *Dominguez*, 467 S.W.3d at 528; *Woods v. State*, 301 S.W.3d 327, 331 (Tex. App.—Houston [14th Dist.] 2009, no pet.). The term "voluntarily" in section 20.04(d) is interpreted narrowly such that "rescue by the police or escape by the victim" will not reduce the punishment level of the offense. *Brown v. State*, 98 S.W.3d 180, 188 (Tex. Crim. App. 2003) (noting that this interpretation "is likely to effectuate the legislative purpose of Section 20.04(d) of encouraging kidnappers to release their kidnap victims"); *Dominguez*, 467 S.W.3d at 528.

Factors to consider in determining whether the defendant released the victim in a safe place include: (1) the remoteness of the location; (2) the proximity of authorities or

persons who could aid or assist; (3) the time of day; (4) climatic conditions; (5) the condition of the victim; (6) the character of the location or surrounding neighborhood; and (7) the victim's familiarity with the location or surrounding neighborhood. *Dominguez*, 467 S.W.3d at 528 (citing *Woods*, 301 S.W.3d at 331–32).

C. Analysis

L.F. told police that Rodriguez "brought [her] back to where [she] wanted to go" and "dropped [her] off" there. L.F. also initially stated at trial that Rodriguez "stopped" the car when she recognized the surroundings and started opening the door. However, L.F. later repeatedly testified that Rodriguez's car was still moving at the time she exited the car. She further testified that, although the place where she exited the car was near where her boyfriend lived, it was three blocks away and she could not see his apartment from there. Moreover, the evidence showed that the area was dark, it was approximately 4:00 a.m., L.F. was intoxicated, and there were no authorities or any other people who could aid or assist L.F. at the place where she exited the car. *See id*.

Rodriguez testified that he stopped the car at a stop sign and allowed L.F. to exit the vehicle. But the trial court, as the trier of fact, was entitled to disbelieve that testimony and to instead believe L.F.'s testimony that she exited the car while it was still moving. *See Matlock*, 392 S.W.3d at 671. That testimony supports a finding that L.F. escaped from captivity rather than being voluntarily released. *See Brown*, 98 S.W.3d at 188.

Rodriguez contends that, by driving away from L.F. as she was running to her boyfriend's apartment, he committed an "overt and affirmative act" which showed L.F. that she had been fully released from captivity. *See Dominguez*, 467 S.W.3d at 527. We disagree. L.F. testified that Rodriguez was driving toward her boyfriend's apartment as

she exited the car, but she stated that she did not know which way Rodriguez was driving after she exited the car because she "never looked back." L.F. later stated that she knew "he didn't go the way I was going." Regardless of which direction Rodriguez drove after L.F. exited the car, there was substantial testimony establishing that Rodriguez did not voluntarily release L.F. in the first place.

Considering the entire record in a neutral light, and mindful of the narrow interpretation of the statute adopted by the Texas Court of Criminal Appeals, *see Brown*, 98 S.W.3d at 188, we cannot say that the trial court's rejection of Rodriguez's safe-place-release defense was so against the great weight and preponderance of the evidence as to be manifestly unjust. Accordingly, the evidence was factually sufficient to support the finding. *See Matlock*, 392 S.W.3d at 671. We overrule Rodriguez's issue on appeal.

III. CONCLUSION

The trial court's judgment is affirmed.

DORI CONTRERAS
Justice

Do not publish.
TEX. R. APP. P. 47.2(b).

Delivered and filed the
11th day of May, 2017.