NO. 12-16-00307-CR

IN THE COURT OF APPEALS

TWELFTH COURT OF APPEALS DISTRICT

TYLER, TEXAS

DANNY REYES PADILLA, APPELLANT	***§***	***APPEAL FROM THE 3RD***
V.	***§***	***JUDICIAL DISTRICT COURT***
THE STATE OF TEXAS, APPELLEE	***§***	***ANDERSON COUNTY, TEXAS***

MEMORANDUM OPINION

Danny Reyes Padilla appeals from his conviction for securing execution of a document by deception. In two issues, Appellant challenges the sufficiency of the evidence. We affirm.

BACKGROUND

The State charged Appellant with securing execution of a document by deception in an amount more than $1,500 but less than $20,000. At trial, Appellant pleaded "not guilty."

Brenda Huddleston testified that Appellant is her brother-in-law. She and her former husband, Donnie Mixon, testified that, when Appellant's home was foreclosed on, they purchased materials so that Appellant and Huddleston's sister could build a home on land that Mixon and Huddleston owned. Appellant agreed to pay rent of $400 per month to cover the building materials, which Mixon testified totaled approximately $30,000 to $35,000. Once the materials were paid off, Appellant would seek a loan and buy the land. Huddleston and Mixon testified that rent was not always timely paid, and was eventually reduced, before Appellant stopped paying rent. Huddleston testified that Appellant never paid off the building materials. Mixon testified that he eventually removed from consideration the option of Appellant purchasing the property.

When Appellant continued failing to pay rent, Huddleston and Mixon instructed him to vacate the premises, but Huddleston testified that Appellant refused to leave the property. Huddleston and Mixon hired an attorney to evict Appellant and his wife from the home.

At some point, Huddleston and Mixon learned that the house had burned down. When Mixon arrived at the scene, an insurance agent stated that Appellant owned the house and that the house and land had been insured in Appellant's name. However, Huddleston and Mixon testified that they owned the house and the land at that time. They subsequently discovered that the appraisal district had changed the land owner name to Appellant's name. Huddleston explained that the name was changed without consent from her or Mixon, and that they received no consideration or cash for any such exchange.

The record contains an email to Appellant, purportedly from Huddleston, which stated, "Hey Sis, This is the form that you guys need so you can get insurance on your house." The body of the email contained a quitclaim deed conveying the property from Mixon to Appellant. The deed contained a signature that purported to be Mixon's. Huddleston denied sending this email and claimed the email was fabricated. She and Mixon both testified that the signature on the quitclaim deed was not Mixon's. Additionally, Mixon denied conveying the land or house to Appellant, signing the quitclaim deed, or otherwise providing a signature conveying the house and land.

Ryan Tolliver, an investigator with the Anderson County District Attorney's Office, testified that the signature on the deed did not appear to be Mixon's. Zona Goodman testified that she notarized Appellant's affidavit, which was attached to the quitclaim deed, but did not witness the signature purporting to be Mixon's. In the affidavit, Appellant swore that the attached quitclaim deed was signed by Mixon.

Huddleston testified that she and Mixon sued Appellant. The jury in the civil case found Appellant and his wife liable for breach of contract, fraud, and slander of title. Huddleston testified that Appellant received money for his personal belongings that were lost in the fire, but not because of any ownership interest in the property. She had no personal knowledge of Appellant's involvement in the fraudulent quitclaim deed.

At the conclusion of trial, the jury found Appellant "guilty" of the charged offense, and assessed his punishment at confinement for six months in state jail. This appeal followed.

SUFFICIENCY OF THE EVIDENCE

In issues one and two, Appellant challenges the sufficiency of the evidence to support his conviction.[1] Specifically, Appellant maintains that the evidence fails to show (1) who executed the allegedly fraudulent document, and (2) that damages total $1,500 to $20,000.

Standard of Review and Applicable Law

When reviewing the sufficiency of the evidence, we determine whether, considering all the evidence in the light most favorable to the verdict, the jury was rationally justified in finding guilt beyond a reasonable doubt. ***Brooks v. State***, 323 S.W.3d 893, 899 (Tex. Crim. App. 2010). The jury is the sole judge of the witnesses' credibility and the weight to be given their testimony. ***Id***. We give deference to the jury's responsibility to fairly resolve evidentiary conflicts, weigh the evidence, and draw reasonable inferences from basic facts to ultimate facts. ***Hooper v. State***, 214 S.W.3d 9, 13 (Tex. Crim. App. 2007). Circumstantial evidence is as probative as direct evidence in establishing the accused's guilt. ***Id***.

A person commits an offense if, with the intent to defraud or harm another, he, by deception, causes another to sign or execute any document affecting property. TEX. PENAL CODE ANN. § 32.46(a)(1) (West 2016). At the time period applicable to Appellant's case, the offense was a state jail felony when the value of the property exceeded $1,500 but was less than $20,000.[2]

Analysis

In this case, the charge instructed the jury to find Appellant guilty of securing execution of a document by deception if it determined, beyond a reasonable doubt, that Appellant, with intent to harm or defraud any person, by deception, caused Goodman to sign or execute any document (the affidavit regarding quitclaim deed) affecting property, service, or the pecuniary interest of Mixon and the value of such property, service, or pecuniary interest totaled $1,500 or more, but less than $20,000. According to Appellant, the evidence is insufficient to establish (1)

[1] In his brief, Appellant asserts both legal and factual insufficiency. However, the court of criminal appeals has held that the "*Jackson v. Virginia* legal-sufficiency standard is the only standard that a reviewing court should apply in determining whether the evidence is sufficient to support each element of a criminal offense that the State is required to prove beyond a reasonable doubt." ***Brooks***, 323 S.W.3d at 895.

[2] *See* Tex. H.B. 1185, 75th Leg., R.S. (1997). The statute was amended in 2015, and the offense is now a state jail felony when the property's value is between $2,500 and $30,000. TEX. PENAL CODE ANN. § 32.46(b)(4) (West 2016).

who executed the alleged fraudulent instrument, and (2) that damages total between $1,500 and $20,000.

Regarding damages, Appellant maintains that the record is devoid of evidence demonstrating the value of the house described in the quitclaim deed. However, the jury heard testimony that Huddleston "maxed out" her Home Depot credit card, and other credit cards, to purchase materials to build the home for Appellant and his family. Mixon confirmed that the Home Depot card, which had a limit of $20,000, was maxed out. He estimated that he and Huddleston gave Appellant between $30,000 and $35,000. Huddleston and Mixon testified that Appellant made payments toward the amount owed, but eventually stopped making payments. The State also introduced the civil judgment into evidence, which shows that Huddleston and Mixon were awarded in excess of $20,000 in damages. As sole judge of the weight and credibility of the evidence, the jury could reasonably conclude that the value of the affected property totaled $1,500 or more but less than $20,000. *See* ***Brooks***, 323 S.W.3d at 899; *see also* ***Hooper***, 214 S.W.3d at 13.

Citing ***Liverman v. State***, 470 S.W.3d 831 (Tex. Crim. App. 2015), Appellant maintains that the record is silent as to who filed the quitclaim deed. He specifically relies on the court of criminal appeals's holding that "it is the filing person, not the clerk, who brings the mechanic's lien affidavit into its final, legally enforceable form." ***Liverman***, 470 S.W.3d at 839. The court's opinion was based on the type of document at issue, i.e., a mechanic's lien, which the property code required to be filed by the person claiming the lien. ***Id***. at 838. "Because the county clerk does not execute the mechanic's lien affidavit when the affidavit is filed, the appellants did not cause 'another' to 'execute' the documents at issue in the present case." ***Id***. at 839. In ***Liverman***, the evidence showed that the county clerk filed and recorded the mechanic's lien affidavit, but there was no evidence that the clerk signed or executed it as contemplated by section 32.46(a)(1). ***Id***. at 834. Moreover, although the clerk signed the affidavit's cover sheet, the indictment did not charge the Livermans with causing the clerk to sign or execute a cover sheet. ***Id***.

In this case, the State alleged that Appellant caused Goodman to sign or execute a document affecting the property of Mixon. The specific document at issue is Appellant's affidavit regarding the quitclaim deed. In the affidavit attached to the deed, Appellant swore as follows:

> Attached is a copy of a Quitclaim Deed signed by Donnie Ray Mixon on the 22nd day of September, 2009, conveying all of his interest in that certain real property commonly known as 5218 East FM 321, Palestine, Anderson County, Texas 75803, being 2 acres described as Tract 2E, Block 1318, in the G. W. Forbes Survey, A-302 in Anderson County, Texas to Danny Padilla.

To the contrary, the jury heard (1) Huddleston deny sending the email, which included the "quitclaim deed," and claim the email was fabricated, (2) Mixon deny conveying the property to Appellant or signing the deed, (3) Mixon and Huddleston testify that the signature on the deed did not belong to Mixon, and (4) Investigator Tolliver state that the signature on the deed did not appear to be Mixon's. Goodman testified that she did not see Mixon sign the deed, but that she notarized Appellant's affidavit. The affidavit, to which Goodman's signature and notary seal are affixed, is attached to the quitclaim deed. Thus, unlike in ***Liverman***, the record in this case contains evidence that Appellant, with the intent to defraud or harm another, by deception, caused Goodman to sign or execute the affidavit attached to the quitclaim deed, thereby affecting Mixon's property. *See* TEX. PENAL CODE ANN. § 32.46(a)(1). Viewing the evidence in the light most favorable to the jury's verdict, we conclude that the jury was rationally justified in finding Appellant guilty of securing execution of a document by deception, beyond a reasonable doubt. *See* ***Brooks***, 323 S.W.3d at 899. We overrule issues one and two.

DISPOSITION

Having overruled Appellant's two issues, we ***affirm*** the trial court's judgment.

GREG NEELEY
Justice

Opinion delivered June 21, 2017.
Panel consisted of Worthen, C.J., Hoyle, J., and Neeley, J.

(DO NOT PUBLISH)

COURT OF APPEALS

TWELFTH COURT OF APPEALS DISTRICT OF TEXAS

JUDGMENT

JUNE 21, 2017

NO. 12-16-00307-CR

DANNY REYES PADILLA,
Appellant
V.
THE STATE OF TEXAS,
Appellee

Appeal from the 3rd District Court
of Anderson County, Texas (Tr.Ct.No. 31612)

THIS CAUSE came to be heard on the appellate record and briefs filed herein, and the same being considered, it is the opinion of this court that there was no error in the judgment.

It is therefore ORDERED, ADJUDGED and DECREED that the judgment of the court below **be in all things affirmed**, and that this decision be certified to the court below for observance.

Greg Neeley, Justice.
Panel consisted of Worthen, C.J., Hoyle, J., and Neeley, J.