

NO. 12-17-00314-CR

IN THE COURT OF APPEALS

TWELFTH COURT OF APPEALS DISTRICT

TYLER, TEXAS

*JAMES HENDERSON,
APPELLANT*

§ *APPEAL FROM THE 349TH*

V.

§ *JUDICIAL DISTRICT COURT*

*THE STATE OF TEXAS,
APPELLEE*

§ *HOUSTON COUNTY, TEXAS*

MEMORANDUM OPINION

James Henderson appeals his conviction for aggravated kidnapping for which he was sentenced to ninety-nine years imprisonment. In one issue, Appellant contends that the evidence is legally insufficient to support his conviction. We affirm.

BACKGROUND

Law enforcement found Vanessa Melson buried on Appellant's property not far from the house in which Appellant had been living.¹ Melson's body had been buried for several days. Three other individuals were with Melson around the time that she died: Appellant, Brenna Theurer, and Robert Mobley, Jr.

Law enforcement investigated Melson's death. During the investigation, it was determined that Melson had been held against her will in the laundry room of Appellant's home before she died. Appellant acknowledged that Melson had been the victim of an aggravated kidnapping and murder, but Appellant identified Mobley as the sole perpetrator. Mobley denied any knowledge of anything that happened to Melson and claimed Appellant must have been the sole perpetrator of any wrongdoing. Theurer identified both Appellant and Mobley as active perpetrators partnering together to commit the crimes against Melson.

¹ Appellant did not own the property, but he was living in the house on the property with Brenna Theurer.

Appellant was charged by indictment with aggravated kidnapping, to which he pleaded “not guilty.” The matter proceeded to trial, and a jury found Appellant “guilty.” The jury determined that Appellant should serve ninety-nine years in prison and be assessed no fine for his crime. The trial court sentenced Appellant in accordance with the jury’s verdict. This appeal followed.

SUFFICIENCY OF THE EVIDENCE

In his sole appellate issue, Appellant challenges the sufficiency of the evidence to support his conviction. Specifically, Appellant claims that the State presented legally insufficient evidence that Appellant intended to commit or aid Mobley in the commission of the aggravated kidnapping of Melson.

Standard of Review

In Texas, 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 v. State*, 323 S.W.3d 893, 912 (Tex. Crim. App. 2010). Legal sufficiency is the constitutional minimum required by the Due Process Clause of the Fourteenth Amendment to sustain a criminal conviction. *See Jackson v. Virginia*, 443 U.S. 307, 316–17, 99 S. Ct. 2781, 2786–87, 61 L. Ed. 2d 560 (1979). The standard for reviewing a legal sufficiency challenge is whether any rational trier of fact could have found the essential elements of the offense beyond a reasonable doubt. *See id.*, 443 U.S. at 319, 99 S. Ct. at 2789. The evidence is examined in the light most favorable to the verdict. *Id.* A successful legal sufficiency challenge will result in rendition of an acquittal by the reviewing court. *See Tibbs v. Florida*, 457 U.S. 31, 41–42, 102 S. Ct. 2211, 2217–18, 72 L. Ed. 2d 652 (1982). This familiar standard gives full play to the responsibility of the trier of fact to resolve conflicts in the testimony, to weigh the evidence, and to draw reasonable inferences from basic facts to ultimate facts. *See Jackson*, 443 U.S. at 319, 99 S. Ct. at 2789.

Under this standard, we may not sit as a thirteenth juror and substitute our judgment for that of the fact finder by reevaluating the weight and credibility of the evidence. *See Dewberry v. State*, 4 S.W.3d 735, 740 (Tex. Crim. App. 1999); *see also Brooks*, 323 S.W.3d at 899. Instead, we defer to the factfinder’s resolution of conflicting evidence unless the resolution is not

rational. See *Brooks*, 323 S.W.3d at 899–900. When the record supports conflicting inferences, we presume that the factfinder resolved the conflicts in favor of the prosecution and therefore defer to that determination. *Clayton v. State*, 235 S.W.3d 772, 778 (Tex. Crim. App. 2007). Direct and circumstantial evidence are treated equally. *Id.* Circumstantial evidence is as probative as direct evidence in establishing the guilt of an actor, and circumstantial evidence alone can be sufficient to establish guilt. *Hooper v. State*, 214 S.W.3d 9, 13 (Tex. Crim. App. 2007). The duty of a reviewing court is to ensure that the evidence presented actually supports a conclusion that the defendant committed the crime charged. See *Williams v. State*, 235 S.W.3d 742, 750 (Tex. Crim. App. 2007).

The sufficiency of the evidence is measured against the elements of the offense as defined by a hypothetically correct jury charge. See *Malik v. State*, 953 S.W.2d 234, 240 (Tex. Crim. App. 1997). Such a charge would include 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.” *Id.*

Applicable Law

A person commits aggravated kidnapping if he intentionally or knowingly abducts another person with the intent to inflict bodily injury on her or violate or abuse her sexually. TEX. PENAL CODE ANN. § 20.04(a)(4) (West 2011). A person also commits the offense of aggravated kidnapping if the person “intentionally or knowingly abducts another person and uses or exhibits a deadly weapon during the commission of the offense.” *Id.* § 20.04(b). “Abduct” means to restrain a person with intent to prevent her liberation by (1) secreting or holding her in a place where she is not likely to be found or (2) using or threatening to use deadly force. *Id.* § 20.01(2)(A),(B). “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)(A). Restraint is “without consent” if it is accomplished by force, intimidation, or deception. *Id.*

Under the law of parties, a person is responsible for the actions of another if he, with the intent to promote or assist the commission of the offense, solicits, encourages, directs, aids, or attempts to aid the other person to commit the offense. *Id.* § 7.02(a)(2) (West 2011).

Analysis

Appellant does not contest that the State presented sufficient evidence that Melson was the victim of an aggravated kidnapping. Instead, Appellant argues that Mobley acted alone in carrying out the crime. From our review of the record, the State presented sufficient direct and circumstantial evidence of Appellant's involvement with the aggravated kidnapping of Melson.

The Crime

Melson was the victim of an aggravated kidnapping. The State presented evidence that Melson sustained injuries prior to her death. Dr. Chester Gwin, III, a medical examiner for Dallas County, conducted an autopsy of Melson's partially decomposed body. Because Melson's body had been buried for some time prior to being found and because predators had eaten a portion of Melson's body, Dr. Gwin acknowledged that it was difficult to determine specifics regarding Melson's injuries. However, Dr. Gwin determined that Melson sustained at least three and possibly more injuries from blunt force trauma. He could not state the type of specific instrument or body part that caused the injuries to Melson. Dr. Gwin testified that a club could have caused Melson's injuries. Theurer testified that Mobley had a stick with a chain on it and that Mobley used that weapon on Melson.

The State also presented evidence that Melson was sexually assaulted. Theurer claimed that both Mobley and Appellant sexually assaulted Melson. In his interviews with law enforcement, Appellant denied sexually assaulting Melson but admitted that Mobley suggested that Appellant sexually assault her. Additionally, while he denied seeing Mobley sexually assault Melson, Appellant believed that Mobley sexually assaulted her.

Once they found her body, law enforcement administered a sexual assault kit examination of Melson, but they recovered no evidence confirming that Melson had been sexually assaulted. William Ruland, an investigator with the Houston County Sheriff's Department, testified that he believed that the sexual assault kit examination was negative because Melson had been buried for nearly three weeks before she was found and her body had partially decomposed before the sexual assault kit was administered.²

Based on the evidence presented, a rational jury could have concluded that Melson was the victim of an aggravated kidnapping. *See Castro v. State*, No. 12-14-00080-CR, 2016 WL

² At the time of trial, Ruland was employed by Robertson County. However, he testified that he was employed by Houston County at the time of the offense and participated in the investigation of Melson's disappearance.

900749, at *6 (Tex. App.—Tyler Mar. 9, 2016, pet. ref'd) (mem. op.) (not designated for publication).

Appellant's Involvement

The State presented sufficient evidence for a jury to conclude that Appellant either committed an aggravated kidnapping of Melson or assisted Mobley with the crime. The State presented Theurer's version of events, and Theurer believed that Mobley and Appellant were both active participants in the crimes against Melson. The State also presented several hours of Appellant's interviews with law enforcement. Finally, the State presented other evidence indicating that Appellant took an active role in assisting Mobley with the aggravated kidnapping of Melson.

First, we recount Theurer's version of events. Theurer initially spoke of Melson to Dan McElhaney, an investigator with the Grapeland Police Department. Theurer contacted McElhaney and wanted to discuss Melson's disappearance. At their first meeting, McElhaney and Theurer were joined by Appellant. Both Theurer and Appellant conceded that Melson and Mobley had been on their property, but they claimed that Melson was alive and arguing with Mobley when Theurer and Appellant left the property.

However, Theurer's story changed over time. Eventually, as relevant to Appellant's role in the aggravated kidnapping of Melson, Theurer claimed that Mobley arrived at Appellant's property early one morning with Melson. Theurer greeted Mobley, and Mobley yelled at Theurer to return to the house and get Appellant. Theurer complied with Mobley's request. Before Appellant could get outside, Mobley and Melson left the area around Appellant's house. Theurer and Appellant found a purse, boots, and some clothes on the driveway. After Mobley and Melson's arguing became so faint that they could not hear it anymore, Theurer and Appellant returned to the house.

A short time later, Appellant told Theurer that he needed the purse and boots because Mobley was returning. Theurer then saw Appellant walking beside Mobley's truck as Mobley parked near the house. Appellant, Mobley, and Melson entered the house. Theurer then heard more arguing and loud banging, so she confronted Mobley and told him to leave. Mobley, who was holding a stick that had a chain at the end of it, responded that Melson had snitched on him or was setting him up, and he was not returning to the penitentiary. Mobley further told Theurer

that he was just scaring Melson and that he would not touch her. Mobley also had methamphetamine with him.

After Theurer confronted Mobley, she returned to her and Appellant's bedroom. She could still hear Mobley and Melson arguing. She argued with Appellant because she wanted Appellant to make Mobley leave, but Appellant refused to do so. Instead, Appellant told Theurer that if she did not like it, she could "kick rocks." Theurer tried to contact the police, but Appellant took Theurer's phone from her.

Theurer then heard Mobley beating the wall with the stick that he had brought with him. She heard Mobley beat Melson, and she heard Melson screaming. Appellant exited the bedroom and returned to Mobley and Melson. Upon Appellant's return to the bedroom, he attempted to reconcile from their argument. Appellant eventually convinced Theurer to have sex with him. During this same time, Theurer could hear Mobley sexually assaulting Melson. A few minutes later, while Appellant and Theurer were engaged in sex, Mobley called for Appellant, and Appellant immediately returned to Mobley and Melson.

Soon after Appellant left the bedroom, Theurer heard a struggle and then Melson being beaten again. Theurer left the bedroom and saw Mobley in the laundry room beating Melson and Appellant was behind Mobley. When Melson tried to escape, Theurer saw Appellant approach Melson. Appellant knelt down by Melson and put his hands on her shoulders, and Mobley continued hitting her. Theurer ran back to the bedroom.

Theurer then heard what she believed to be Appellant sexually assaulting Melson. At different times in her interviews with police, Theurer changed her story regarding whether Melson was alive or deceased when Appellant sexually assaulted her. Theurer next saw Appellant and Mobley carrying a rolled up rug to Mobley's truck. Theurer saw hair the same color as Melson's sticking out of the rug. When Appellant returned to Theurer, he told her that Melson was alive and well and with Mobley in the pasture. She looked in the pasture and saw Mobley, but she could not see Melson. At that point, Theurer left the property, and Appellant followed.

Theurer saw Appellant assist in the aggravated kidnapping. Theurer further saw Mobley and Appellant acting as a team in the crimes against Melson. She believed that Mobley was very comfortable with Appellant. Appellant stopped Melson from escaping when she was still alive. Although Mobley stopped Melson before Appellant reached her, Appellant too acted to stop her

from leaving. Theurer did not believe that Appellant was intimidated by Mobley, but she said that Mobley definitely was the leader and Appellant was the follower. Appellant might have been worried that Mobley would hurt Theurer. During the crimes against Melson, Theurer never saw Appellant do anything that made her think he was afraid of Mobley.

Second, we address Appellant's statements to law enforcement. Appellant agreed to talk to the police about the incident with Theurer on several different occasions. Before his first conversation with the police, Appellant coached Theurer on their story. Appellant's story changed over time. Eventually Appellant admitted that (1) he invited Mobley to his property, (2) he texted Mobley to bring Melson back to the property, (3) Mobley put Melson in the laundry room and prohibited her from leaving, (4) Mobley hit Melson while they were in Appellant's house, (5) he stopped Theurer from calling the police, and (6) he destroyed evidence. Appellant also told Ruland that he believed Mobley gave Melson too much methamphetamine and that Mobley sexually assaulted Melson.

Finally, the State presented other circumstantial evidence of Appellant's involvement in the aggravated kidnapping of Melson. Appellant made several statements that discredited his version of events. Appellant said that he could see from his kitchen window Mobley and Melson interacting in the pasture, but law enforcement felt this unlikely because the window had a very limited view of the pasture. Appellant stated that he left the property to seek help for Melson, but he was gone several hours before returning to the property. In addition, Appellant's friend Matt Jackson told law enforcement that when Appellant arrived at Jackson's house, Appellant told Jackson that Mobley was beating Melson. Jackson wanted to help Melson, but Appellant told Jackson that it was too late.

Cody Bruenig worked for a computer forensics company called Flash Back Data. To assist in the investigation of the crimes committed against Melson, Bruenig downloaded messages from Mobley's cell phone. Bruenig identified several text messages between Mobley and Appellant. Although Mobley's text messages to and from Appellant in the few days preceding and following the crimes were deleted, Bruenig was able to retrieve the texts.

Bruenig also examined Appellant's cell phone, but was able to retrieve very little information from the phone. Bruenig believed that Appellant's cell phone either was completely reset or had very limited use.

From the text messages recovered, Appellant offered to (1) allow Mobley to utilize Appellant's home and (2) take care of Melson for Mobley. Additionally, the messages implied that Appellant knew the extent of Mobley's crimes against Melson as two messages from Mobley to Appellant referenced not wanting to run into police and being tired from all the work he just completed. According to law enforcement's investigation, these two text messages were sent shortly after Mobley killed and buried Melson. Mobley and Appellant confirmed that these text messages were sent.

Additionally, Melson's body was found approximately 115 yards from the back door of Appellant's house. Law enforcement had been on Appellant's property before Appellant and Theurer chose to discuss Melson's disappearance. While they were on the property, Appellant suggested that the officers take a look at the same part of the property where Melson's body was found.

In response to the evidence against him, Appellant contends that Theurer was not a credible witness. Theurer has been convicted of several crimes, and she changed her story regarding the crimes against Melson. However, as the sole judge of the weight and credibility of the evidence, the jury was entitled to choose which version of the facts to believe and, in doing so, could resolve any inconsistencies either for or against Appellant. See *Clayton*, 235 S.W.3d at 778. We defer to the jury's resolution of conflicting evidence. See *Brooks*, 323 S.W.3d at 899–900.

Lack of Duress

Finally, the evidence was sufficient for the jury to conclude that Appellant was not under duress when he participated in the crime. The evidence shows Mobley is a violent person and tries to intimidate people. A few days after the crime, Mobley went to Appellant's property and asked if Appellant could control Theurer or if Mobley needed to take care of her. Appellant relayed Mobley's threat to Theurer, and a few days later, Theurer decided to talk to the police.

Appellant confirmed that Mobley threatened Theurer, but he denied Mobley threatened him. Later, Appellant claimed that Mobley implicitly threatened him. At times, Appellant claimed to be scared of Mobley, but he also denied being afraid of Mobley on several occasions. It was within the jury's province as factfinder to resolve these conflicts in Appellant's testimony and the jury was entitled to choose which statements to believe; the jury could, and evidently did,

resolve these inconsistencies against Appellant. See *Clayton*, 235 S.W.3d at 778. Thus, we defer to the jury’s resolution of conflicting evidence. See *Brooks*, 323 S.W.3d at 899–900.

Summary

Viewing the evidence in the light most favorable to the verdict, we conclude that a rational jury could have found, beyond a reasonable doubt, that Appellant either committed aggravated kidnapping or assisted Mobley in the commission of aggravated kidnapping. See TEX. PENAL CODE ANN. §§ 7.02(a)(2), 20.04; *Williams*, 235 S.W.3d at 750. Accordingly, we overrule Appellant’s sole issue.

DISPOSITION

Having overruled Appellant’s sole issue, we *affirm* the judgment of the trial court.

BRIAN HOYLE
Justice

Opinion delivered May 8, 2018.

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

(DO NOT PUBLISH)

