

IN THE UTAH COURT OF APPEALS

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State of Utah,	)	MEMORANDUM DECISION
	)	(Not For Official Publication)
Plaintiff and Appellee,	)	
	)	Case No. 20080567-CA
v.	)	
	)	F I L E D
Christina L. Briggs,	)	(November 4, 2010)
	)	
Defendant and Appellant.	)	<span style="border: 1px solid black; padding: 2px;">2010 UT App 300</span>

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Second District, Ogden Department, 071902062  
The Honorable Scott M. Hadley

Attorneys: Randall W. Richards, Ogden, for Appellant  
Mark L. Shurtleff and Jeanne B. Inouye, Salt Lake  
City, for Appellee

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Before Judges Orme, Roth, and Christiansen.

CHRISTIANSEN, Judge:

Defendant Christina L. Briggs appeals her jury convictions for aggravated robbery, see Utah Code Ann. §§ 76-6-301, -302 (2008), and aggravated kidnapping, see id. §§ 76-5-301, -302. Defendant argues that her trial counsel performed ineffectively by not moving for a directed verdict after the State failed to present sufficient evidence and that the trial court plainly erred by not sua sponte entering a directed verdict at the close of the State's evidence. We affirm.

For Defendant to prevail, she must first either establish that an error obvious to the trial court existed, see State v. Dunn, 850 P.2d 1201, 1208-09 (Utah 1993) (explaining the requirements to establish plain error), or that her counsel's performance was deficient, see State v. Finlayson, 2000 UT 10, ¶ 10, 994 P.2d 1243 (explaining the requirements to establish ineffective assistance of counsel). Defendant attempts to establish both of these claims by arguing that a directed verdict should have been requested and granted. Therefore, in order to prevail on her claims, Defendant must prove that the State failed to present sufficient evidence to support her convictions as is required to be entitled to a directed verdict. See State v. Montoya, 2004 UT 5, ¶ 32, 84 P.3d 1183; State v. Diaz, 2002 UT

App 288, ¶ 33, 55 P.3d 1131 (determining that if sufficient evidence existed to support a conviction, an appellate court need not evaluate whether the trial court plainly erred when it allowed the case to go to the jury), cert. denied, 63 P.3d 104 (Utah 2003).

"[A] sufficiency of the evidence inquiry ends if there is some evidence, including reasonable inferences, from which findings of all the requisite elements of the crime can reasonably be made." State v. Gardner, 2007 UT 70, ¶ 26, 167 P.3d 1074 (internal quotation marks omitted).

When evaluating a motion for a directed verdict the court is not free to weigh the evidence and thus invade the province of the jury, whose prerogative it is to judge the facts. Rather, the court's role is to determine whether the state has produced believable evidence on each element of the crime from which a jury, acting reasonably, could convict the defendant.

Montoya, 2004 UT 5, ¶ 32 (citation and internal quotation marks omitted).

Defendant argues that the State presented no physical evidence to prove she committed the crimes.<sup>1</sup> However, we do not limit our analysis to physical evidence but instead look at all evidence, direct or circumstantial, that supports the verdict. See id. ¶ 33 (stating that "the elements needed to make out a cause of action 'may be proven by direct and by circumstantial evidence'" and "[i]f there is any evidence, however slight or circumstantial, which tends to show guilt of the crime charged or any of its degrees, it is the trial court's duty to submit the case to the jury" (citations omitted)).

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<sup>1</sup>In making this argument, Defendant acknowledges her marshaling duty but suggests that there is no evidence to marshal given the lack of physical evidence. However, Defendant was required to "'marshal all record evidence,'" State v. Pritchett, 2003 UT 24, ¶ 25, 69 P.3d 1278 (emphasis added) (quoting Utah R. App. P. 24(a)(9)); see also id. ¶ 22, direct or circumstantial, that supported the jury's verdict. Although Defendant's efforts at marshaling leave something to be desired, we choose to exercise our discretion and reach the merits of Defendant's arguments. See Martinez v. Media-Paymaster Plus/Church of Jesus Christ of Latter-day Saints, 2007 UT 42, ¶¶ 17-21, 164 P.3d 384 (clarifying that the court of appeals may, in its discretion, address factual issues that are not properly marshaled).

We agree with the State that the victim's testimony,<sup>2</sup> along with the physical evidence that corroborates his testimony, established evidence of Defendant's own actions sufficient to support the jury's verdict. The victim testified that he met Defendant at the mouth of Ogden Canyon where the victim offered to drive his own vehicle to take Defendant and her companion, Brandon Morris, up the canyon to their destination. However, as the victim started to get back into his vehicle, Morris forced the victim into the vehicle with a knife. Morris then took the victim's keys and wallet, and Defendant took the victim's phone. During the drive, Defendant tied the victim's hands with a string from a hooded sweatshirt, threatened the victim with a pipe wrench, and threw the victim's phone out of the vehicle. After driving past Huntsville, they turned off the road and Morris directed the victim to turn into the woods where Morris tied him to a tree with string and soldering wire. As the Defendant and Morris left in the victim's vehicle, the victim heard a loud bang. After freeing himself from the tree, the victim saw a large rock dislodged from the dirt and followed a trail of spilled transmission fluid to his disabled vehicle.

When the police arrived, they observed scratches and punctures on the victim's body consistent with knife wounds and marks on his wrists consistent with being tied up; located the victim's cell phone near where he testified that Defendant had thrown it out of the vehicle; observed the victim's disabled vehicle, a dislodged boulder, and a trail of transmission fluid; located Defendant's own vehicle where the victim said the incident began; located string attached to the tree where the victim claimed to have been tied; and located an empty spool of soldering wire.

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<sup>2</sup>Defendant argues that the victim's testimony was not credible and thus should not be considered as evidence against Defendant.

As we have often said, credibility is an issue for the trier of fact, in this case the jury. The jury necessarily accepts the testimony of certain witnesses and discounts conflicting testimony. Moreover, as a general rule, in reviewing a jury verdict we assume that the jury believed the evidence supporting the verdict.

State v. Dunn, 850 P.2d 1201, 1213 (Utah 1993) (citations omitted). Based on its verdict, the jury found the victim's testimony credible, see id., and we review the evidence "in a light most favorable to the jury's verdict," State v. Diaz, 2002 UT App 288, ¶ 33, 55 P.3d 1131 (internal quotation marks omitted), cert. denied, 63 P.3d 104 (Utah 2003).

This evidence, along with the reasonable inferences that could be drawn from it, was sufficient to support Defendant's convictions for aggravated robbery and aggravated kidnapping. Because Defendant did not establish that the State failed to present sufficient evidence to support her convictions, she cannot establish that her counsel performed ineffectively by not moving for a directed verdict or that the trial court plainly erred by not sua sponte entering a directed verdict.

Affirmed.

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Michele M. Christiansen, Judge

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WE CONCUR:

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Gregory K. Orme, Judge

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Stephen L. Roth, Judge