Affirmed; Opinion Filed May 24, 2018.

In The
Court of Appeals
Fifth District of Texas at Dallas

No. 05-16-01361-CR

MICHAEL KEVIN ADAMS, Appellant
V.
THE STATE OF TEXAS, Appellee

On Appeal from the 366th Judicial District Court
Collin County, Texas
Trial Court Cause No. 366-81115-2014

MEMORANDUM OPINION

Before Justices Lang, Brown, and Whitehill
Opinion by Justice Lang

Following a plea of not guilty, appellant Michael Kevin Adams was convicted by a jury of capital murder. The evidence in this case is extensive and complicated. However, a jury heard the evidence and made its determination after being instructed not to consider "any matters not in evidence before you." Punishment was assessed by the trial court at the mandatory sentence of life imprisonment without parole. *See* TEX. PENAL CODE ANN. § 12.31 (West Supp. 2017).

In two issues on appeal, appellant contends (1) the evidence is not "legally sufficient to show that [appellant] was the murderer" and (2) the trial court abused its discretion by denying his motion to suppress the results of the inventory search of his vehicle. We decide against appellant on his two issues. The dissent contends appellant was convicted based upon speculation, not evidence. We disagree. The trial court's judgment is affirmed.

I. FACTUAL AND PROCEDURAL CONTEXT

The indictment in this case alleged in part that on September 9, 2013, appellant intentionally caused the death of the complainant, N.L., by shooting her with a firearm while "in the course of committing or attempting to commit the offense of retaliation" against her.

A. Pretrial Motion to Suppress Results of Inventory Search of Vehicle

Prior to trial, appellant filed a motion to suppress evidence found during a September 10, 2013 inventory search of his truck. In that motion, appellant contended the inventory search (1) "was unlawful because it was not conducted in good faith, but was instead conducted as a ruse to look for evidence of a crime"; (2) "was not conducted pursuant to a valid inventory search policy"; and (3) "exceeded the scope of any inventory policy in effect."

At a pretrial hearing on that motion to suppress, Reuben Mankin testified he is employed as a Texas Ranger with the Texas Department of Public Safety ("DPS"). On September 9, 2013, he was asked to assist in investigating the homicide in question. According to Mankin, appellant became a suspect "right away" based on events that had occurred earlier in the year involving him and N.L. After viewing the crime scene, Mankin drove to appellant's residence in Frisco, Texas, to "establish surveillance."

At some point the following morning, Mankin observed appellant leaving his residence in a white truck with no front license plate. Mankin contacted Frisco police officer Brian Sartain to "get a traffic stop" based on the missing license plate. Mankin stated he was not intending for appellant to be arrested on that license plate violation, but rather, his intent "was for [appellant] to be stopped and for us to be able to approach him and talk to him about [the homicide] on a voluntary basis." When the traffic stop was conducted, appellant pulled into a parking space in the

parking area of a McDonald's restaurant. At that point, Frisco police arrested appellant for a "registration violation" and he was taken into custody at that location.

Mankin stated that when he arrived at that location and learned of appellant's arrest, he "knew that since [appellant] was placed under arrest that there was going to be an inventory of his vehicle," "[p]er whatever Frisco policies were." Mankin told Sartain that if the police saw anything related to the homicide during the inventory search of the vehicle, they were to "back out" so a search warrant could be secured. Frisco police proceeded with the inventory search of appellant's vehicle, but stopped when Sartain observed a small silver screw in the "front area" of the vehicle. Mankin testified the screw found in appellant's vehicle "appeared to be a grip panel screw" from the handle of a handgun. Mankin stated that at that point, the vehicle was impounded and a search warrant was obtained. Appellant was transported to the Frisco jail. On cross-examination, Mankin testified in part that when he initially contacted police respecting the traffic stop, "[m]y goal was to bring [appellant] in voluntarily and talk to him."

Sartain testified he is a patrol officer with the Frisco Police Department. He stated that when he arrived at the scene of the traffic stop described above, other officers were "conversing with the driver, getting him out of the vehicle." Sartain stated (1) police were not "searching for evidence of a crime when the vehicle was impounded," (2) the "inventory process" in this case was not "a ruse or some kind of trick to be able to find evidence in that truck without a warrant," and (3) the purpose of inventorying a vehicle before impoundment is "[t]o log and identify the contents of a vehicle for the safekeeping of property." Additionally, Sartain testified (1) "Frisco Police Department policy" allows police the discretion to "either impound the vehicle or not" when an individual driving a vehicle is arrested, and (2) he "typically" impounds vehicles when he makes an arrest because "if the guy comes back and has to stay in jail for a month," a vehicle parked in a

parking lot can be "towed off by the property management" or "broke into," or "the person may even claim that there were things taken out of his vehicle and now I'm on the hook for that."

On cross-examination, Sartain testified in part (1) the impoundment in this case was consistent with "the City of Frisco police policy" and (2) the arrest of appellant was "a high-risk arrest" that "involved many officers," some with "weapons drawn," based on the fact that appellant was "a person of interest or a suspect in a homicide." Further, Sartain was asked on cross-examination, "As far as the vehicle being involved in any type of a crime other than the display of no front license plate, there's no reason to believe that it was involved in anything other than that offense, correct?" Sartain stated, "Yes, sir, as far as I know."

Following the presentation of that testimony and arguments of counsel,[1] the trial court denied appellant's motion to suppress the results of the inventory search of his truck.

B. Trial

The trial on the merits transpired over six days. Thirty-three witnesses testified. That testimony is described below.

Scott Greer testified that at the time of the events in question, he was employed as a detective with the Frisco Police Department. On March 6, 2013, he was assigned to investigate a sexual assault involving N.L. Greer stated N.L. identified her assailant as appellant, who was her

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[1] During argument on the motion to suppress, counsel for appellant argued the inventory search in question was not "conducted in good faith and under a reasonable standardized police procedure." Additionally, counsel for appellant cited *Josey v. State*, 981 S.W.2d 831, 842 (Tex. App.—Houston [14th Dist.] 1998, pet. ref'd), and stated in part,

> Both of the officers confirm that the vehicle, where it was parked, was not impeding any flow of traffic, that it was not a danger to public safety in any way, and that otherwise it was lawfully parked. There was nobody from McDonald's or any other person with an ownership interest in the lot came and told them that the vehicle needed to be removed, it could not stay there. In other words, it was okay to stay where it was. I think the evidence is clear on that. The evidence is also clear that they never inquired of Mr. Adams of whether or not he wanted someone to come take the vehicle instead of it being impounded.
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> *Josey* at 842 states that "Factors that may be considered to determine the reasonableness of impoundment are, one, whether someone was available at the scene of the arrest to whom the police could have given possession of the vehicle; two, whether the vehicle was impeding the flow of traffic or was a danger to public safety; three, whether the vehicle was locked; four, whether the detention of the arrestee would likely be of such duration as to require police to take protective measures; five, whether there was some reasonable connection between the arrest and the vehicle; and, six, whether the vehicle was used in the commission of another crime."
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> I don't believe there's any evidence that's been testified to that would substantiate that any of the factors that would weigh in favor of this being an unlawful [sic] impoundment of this vehicle were ever present.

former fiancé. N.L. told Greer that on March 4, 2013, she and appellant were no longer engaged or dating. At approximately noon that day, she arrived at appellant's house in Frisco to pick up some belongings. Appellant invited her to have lunch with him and she agreed to do so. N.L. told Greer that after eating a few bites of the pasta appellant served to her, she felt very tired and dizzy and surmised appellant had put drugs in her food. Greer stated N.L. described to him a sexual assault by appellant that occurred while she was under the effect of the drugs. N.L. was conscious, but was unable to "fight him off" because she was drugged. Appellant took photographs of her during the sexual assault. After that assault, she was handcuffed, "hogtied" with rope, and left naked for hours on a blue tarp in appellant's garage. She passed out several times. At one point during the night, appellant loosened the rope slightly and N.L. managed to run outside, still naked, and reach a neighbor's house. She banged on the neighbor's door, but before anyone answered, appellant caught her and tied her up again. She asked appellant whether he was going to kill her and he said he did not know. Eventually, N.L. convinced appellant she still loved him and would not go to the police if he released her. Appellant released her the following day and she drove directly to the Frisco police station.

Greer testified appellant was arrested on March 6, 2013, and criminal charges were filed against him. Also, police searched appellant's house and car and found evidence consistent with N.L.'s account of the assault she described. Appellant posted bond in that case and was released. Subsequently, appellant was indicted in that case on September 27, 2013.

Greer stated he resigned from the Frisco Police Department in approximately late September 2013. He stated the reason he resigned was that during the investigation of N.L.'s death, it "came to light" that he had conducted an "inappropriate relationship" with her starting in June 2013, while the investigation of the sexual assault described above was ongoing. Also, he conducted inappropriate relationships with several other women connected to cases he was

investigating. Greer testified he exchanged sexually explicit emails with N.L., but they never had a physical relationship.

On cross-examination of Greer, numerous sexually suggestive and explicit email messages between him and N.L. were admitted into evidence and published to the jury. Additionally, Greer stated on cross-examination that in September 2013, the vehicle he was driving as his personal vehicle was "a two-tone truck, maroon and beige," with "beige at the bottom."

According to Greer, on March 7, 2013, N.L. obtained an emergency protective order against appellant that prohibited him from having any contact with her. On April 4, 2013, N.L. reported to Frisco police that appellant had violated that protective order. Specifically, N.L. told police her mail was stolen and appellant left a hand-written letter in her mailbox that was not postmarked. The letter was signed by appellant and sprayed with his cologne. N.L. told police she felt "terrified and harassed by the letter" and she and her son were trying to "find shelter elsewhere." In June 2013, N.L. and her son moved from Frisco to Melissa, which is approximately twenty miles from Frisco.

Sergeant A.J. Jumper testified he is a criminal investigator with the Collin County Sheriff's Office. He stated that on September 9, 2013, he was called to investigate a crime scene at 3006 Maple in Melissa. He arrived at the scene shortly after 5 p.m. He took photographs of the interior and exterior of the house at that location and collected evidence from the master bedroom, where the body of N.L. was found. She had been shot twice in the head. She was stretched out on the bed, naked from the waist down. Her underwear was around her right ankle and the tank top she was wearing had been pulled up, exposing her chest. Jumper testified he saw no sign of forced entry at the house.

Jumper stated the evidence he collected included, in part, (1) two condom wrappers that were in the toilet in the master bathroom, (2) a green condom found in the wastebasket in the

master bathroom, (3) a yellow condom found wrapped in a towel in the master bedroom, (4) two "spent" .22-caliber cartridge casings, one of which was found on the bed in the master bedroom and one of which was found beneath that bed, and (5) swabbings from the body of N.L. and various locations in the master bedroom and bathroom. That evidence was sent to a Garland crime laboratory operated by DPS to be tested for DNA and other substances. Also, N.L.'s bedsheet and clothing were sent to that lab for analysis. Photographs taken by Jumper of the house and the evidence collected were admitted into evidence and published to the jury.

According to Jumper, there was a substance that appeared to be blood on the rim of the toilet bowl in the master bathroom and on the faceplate of the light switch located just to the right of the doorway inside that bathroom. Jumper collected swabbings of that substance and sent them to the Garland crime lab described above. Additionally, Jumper testified the wastebasket in which the green condom was found was located next to the toilet in the master bathroom. He testified the wastebasket was small and had "a plastic liner in it, kind of like a garbage can liner." He stated that at the time he first saw the wastebasket, it was more than halfway filled with trash. The edge of the green condom could be seen near the top of that trash before any of the items of trash were moved. Photographs of the wastebasket as it appeared before any of the items of trash were moved were published to the jury.

Dr. William Rohr testified he is the medical examiner for Collin County. He stated he performed an autopsy on N.L.'s body and determined her death was caused by "two gunshot wounds to the head." On cross-examination, Rohr testified he "really can't tell" the time of death. He stated N.L.'s body was found at 4:28 p.m. on the date in question.

N.L.'s son, Trey, testified he and N.L. moved in with appellant during the time N.L. and appellant were engaged. He stated appellant was "obsessive-compulsive" and kept his house

"incredibly neat and orderly." Further, he stated appellant had an "obsession" with N.L.'s body and kept a topless photograph of her on his nightstand with two candles next to it.

Trey testified that on the date of the March 2013 sexual assault described above, he received a text message on his phone that appeared to be from his mother. That message stated she was "going to spend a few nights" with a man she had been seeing named "Kevin" and if she did not respond to contact from Trey, it was because her phone battery was almost dead. Trey testified he later learned from his mother that appellant had sent that message from her phone.

According to Trey, he and his mother moved to Melissa in June 2013 "mostly to escape [appellant]." Trey testified N.L. told him, "I know he's going to find me and I know he's going to kill me." A "couple of weeks" before his mother's death, Trey found a "blue tarp with a set of handcuffs on top" on the front porch of their house in Melissa. Based on what his mother had told him, he knew those items were similar to items used in the sexual assault by appellant. He stated that both he and N.L. were "fearful." Further, he testified that "closer to September 9th," N.L. "was resigned that she was going to get killed by [appellant]" and "[i]t was almost like she gave up."

Trey stated that at the time of his mother's death, he was a junior in high school. Before leaving for school on the day of the murder, he went into his mother's bedroom and saw her sleeping. He stated there was no one else in the house. He kissed N.L. on the forehead and said, "Love you. See you when I get home." He stated she was "drowsy" and responded, "Bye. I love you." Trey left the house through the front door at approximately 8 a.m. and locked that door. He testified he arrived home from school at approximately 4:30 p.m. Trey stated he believes the front door was unlocked. He entered the house and called to his mother. When she did not answer, he assumed she was sleeping. He went to her bedroom and found the door locked. He "peeked under

the door" and "saw her foot hanging off the bed." Then, he picked the lock and discovered his mother's body as described above. He ran outside and called 9-1-1.

Michael Groettum testified he is a police officer with the City of Melissa Police Department. He testified that following the death of N.L., he obtained phone records pertaining to a cell phone number registered to appellant. Groettum stated those records showed six phone calls on September 9, 2013, with the first occurring at 11:13 a.m. in Frisco. Groettum "mapped" the locations of the "cellular towers" linked to those calls and concluded there was not any time that day "where [appellant's] phone was hitting off of the cell tower that was closest to [N.L.'s] home in Melissa." Additionally, Groettum testified he "made the observation that [appellant's] phone was used 9 times in the 11 days prior to September 9th," which Groettum stated "[l]ed me to believe that there could possibly be another cellular phone."

Teresa Sauceda testified that at the time of the homicide in question, she was employed at Southwest Collateral Recovery, which provides assistance in the repossession of motor vehicles. One of her coworkers was appellant, who was the company's office manager at that time. She stated she and appellant had a "friendly working relationship." Sauceda testified that on Friday, September 6, 2013, she was in appellant's office and saw him looking at a photo of N.L.'s face on his phone.

Mankin testified that when he arrived at N.L.'s home on the date of the homicide in question, other law enforcement officers were already present. He stated (1) the yellow and green condoms described above "matched up" with the two condom wrappers found in the toilet and (2) the "edge of the green condom" can be seen in the photographs of the wastebasket taken before any of the items of trash inside were moved.

Additionally, Mankin described the inventory search of appellant's vehicle and testified that on that same date, he and other law enforcement officers conducted a search of appellant's

residence. Numerous miscellaneous items related to firearms, including several empty gun cases, were found at appellant's home. However, no firearms were found. Mankin stated appellant was a "licensed federal firearms dealer," but "had been ordered to get rid of his guns because of that protective order" obtained by N.L. in March 2013. On a shelf inside the master bedroom closet, a packet containing "developed photographs" was found. One of those photographs showed two .22-caliber firearms, both of which were "suppressed." Mankin testified suppression "muffles out the sound of the firearm."

According to Mankin, a "lot of people" were interviewed by the law enforcement officers investigating this case in an effort to determine the source of "unaccounted-for" male DNA found at the crime scene. He stated N.L. worked at a "gentlemen's club" and police investigated men who were "closely associated with her" through that job and "would have contact with her." Mankin testified all of those men were "eliminated" because their DNA "did not match" that collected at the crime scene.

Mankin stated appellant gave a voluntary statement to police respecting his whereabouts on the date of N.L.'s death. According to Mankin, appellant stated he woke up at approximately 9:15 a.m. that day and went for a two-mile walk, then took a shower and trimmed bushes in his yard. Also, appellant "went into vivid details about exactly what he did after noon." Mankin stated police were unable to "corroborate anything that he said about what he did with his morning."

Additionally, Mankin met with appellant's ex-wife, Gina Noble, and her attorney. On September 27, 2013, Noble gave written consent for a search of a storage unit leased by her. In that storage unit, Mankin found firearms, ammunition, and firearm accessories, including a silver gun case that "resemble[d] the case that's in the photograph that we saw that contained the two firearms at [appellant's] residence." The gun case in the storage unit contained miscellaneous

firearm accessories, including one suppressor, but did not contain the .22-caliber guns pictured in the photograph.

Mankin testified that during his investigation of N.L.'s death, he learned that at the time of the events in question, the house where N.L. lived had been undergoing painting and remodeling by contractors. Several days after the shooting, the contractors informed police that the lock on one of the windows in the master bedroom was not secure because "[t]he screws had been taken out." Mankin stated that at the time he viewed the crime scene on the date of the shooting, the windows were covered from the inside by "sheeting material" that was stapled to the interior window sills. Further, he stated (1) the sheeting material would "have to be disrupted" in order for someone to get in or out of a window and (2) there was no indication that the sheeting material was "untacked" when he saw the crime scene on the date of the shooting.

Additionally, Mankin stated his investigation revealed emails between N.L. and Greer that showed Greer's inappropriate relationship with N.L. Mankin stated Greer told him he had visited N.L.'s house in Melissa twice, once in July and once in August. Also, Mankin stated Greer's timesheets showed that starting at 8:15 a.m. on the date of the shooting, he was working at a school in Frisco.

On cross-examination, Mankin testified (1) footage from a video surveillance camera at a Home Depot store in Frisco shows appellant in that store at approximately 1:30 p.m. on the date of the shooting, (2) a receipt provided by appellant shows he made a purchase at approximately 1 p.m. that day at a Bath & Body Works store in Frisco, and (3) neighbors of appellant saw him working in his yard that afternoon. Also, Mankin stated that when he visited the crime scene on the date of the shooting, he did not examine the windows in the master bedroom or try to look behind the sheeting material on those windows. Additionally, Mankin stated (1) analysis of vaginal swabbings of N.L. showed a DNA profile that was interpreted as a mixture of the DNA of N.L.

and one unknown male; (2) analysis of anal swabbings from N.L. showed a DNA profile that was interpreted as a mixture of the DNA of N.L. and one unknown male; and (3) swabbings from the inside of the yellow condom showed DNA that originated from a single unknown male.[2] The individuals "excluded" as contributors respecting that DNA included appellant and Greer. Further, Mankin stated (1) the green condom described above was partially "inside out" when it was found, and thus the surface of the condom facing outward when it was found was actually the interior portion of the condom; (2) analysis of the outward-facing surface of the green condom showed DNA that was "interpreted" as a mixture of that of the victim and either two or three other individuals; (3) DNA of "epithelial cells" found on the outer-facing surface of the green condom "comes back to [appellant]" and thus he is one of those two or three other individuals; (4) DNA analysis showed it was "inconclusive" whether Greer or any of six other men identified by police who were associated with N.L. could be contributors respecting the other DNA on the outward-facing surface of the green condom; (5) DNA on the inward-facing portion of the green condom was interpreted as a mixture of that of N.L. and two males, neither of which was appellant or Greer, and (6) the fact that the DNA testing of evidence at the crime scene, including the inward-facing portion of the green condom, was "inconclusive" as to N.L.'s son was not surprising to Mankin because "he's living in the house so he's coming into contact with things that may have done that," such as bedding or "something in the trash." According to Mankin, (1) the "DNA findings" of "epithelial cells from a condom found in the trash can that came from [appellant]" "would put [appellant] at the crime scene" and (2) he rejected "the idea that [appellant's] DNA might be there as a result of cross transference" because "[appellant and N.L.] had been away from each other for

[2] The results of the DNA analysis did not include a determination of whether any of the DNA at the crime scene from "unknown" individuals was from the same person.

hundreds of days at that point" and the wastebasket "had what appeared to be fresh trash in it, so there was no good reason for his DNA to be there."

Also, counsel for appellant asked Mankin whether he formed a theory about the "time frame as to when this occurred." Mankin testified (1) "there's a strong possibility" N.L.'s sexual encounter from which the evidence described above resulted "could have happened early that morning" after Trey left for school; (2) also, there was "a possibility" it could have taken place prior to that time; (3) the medical examiner is "not putting a time frame as to when [the shooting] occurred"; and (4) Mankin's theory is that the sexual encounter and murder "did occur in the morning hours just before noon." Further, Mankin stated (1) Trey gave a statement in which he said that on the night preceding N.L.'s murder, he slept on a couch in the living room; (2) the living room is located such that "somebody [would] have to walk past him to get to the bedroom"; and (3) Trey did not report seeing any men entering N.L.'s bedroom on the night of September 8 or the morning of September 9.

Kimberlee Mack testified that at the time of the events in question, she was a DNA analyst with the DPS crime lab in Garland. She analyzed DNA samples pertaining to the sexual assault and homicide described above and prepared reports summarizing her analyses. Mack stated that on the "outside" of the green condom, she found a mixture of DNA from N.L., appellant, and an unknown "additional contributor." Further, Mack (1) stated epithelial cells are skin cells and can be "separated out" from other types of cells, such as sperm, and (2) described the process and procedures she used to analyze the DNA in question.

On cross-examination, Mack testified (1) the DNA from the March 2013 sexual assault described above was not analyzed until after the September 2013 homicide occurred; (2) the presence of a person's DNA in a location "doesn't mean that person was there" or "tell us how it got there"; (3) it is possible DNA can be "picked up" by items that touch it and deposited from

those items onto other surfaces; (4) depending on variables such as temperature, DNA can remain on an item "years and years after it was left there"; and (5) contamination of DNA from one case with DNA from another case can occur in a lab.

Melissa Haas testified she is the DNA section supervisor with the DPS crime lab in Garland. She stated that on October 16, 2013, there was an incident at the lab "in which some samples with regard to this case were destroyed." Specifically, according to Haas, "while a batch of samples was placed on the robotic platform for extraction, the deep-well processing plate was inadvertently left off of the platform" and "instead of the DNA extracts going into this plate, they actually were disbursed over the deck of the instrument." As a result, the swabbings described above from the rim of the toilet bowl and the faceplate of the light switch in the master bathroom were "lost." Further, Haas stated that immediately after that incident, the robotic platform and surrounding area were decontaminated and she is "confident" future samples processed with that same instrument were not contaminated.

On cross-examination, Haas testified lab records show that on September 23, 2013, evidence from each of the two cases described above, including the green condom, was examined by the same forensic biologist at the lab. The lab records do not show what time the examination of each piece of evidence was conducted. Haas stated (1) based on laboratory protocols, "[n]o cases are to be out at the bench at the same time" and (2) pursuant to lab policy, the work area would have been decontaminated before starting any work pertaining to the second case.

Christie Cheng testified she is the forensic biologist who examined evidence from both crimes described above at the DPS crime lab on September 23, 2013. She stated (1) "a hundred percent of the time" she follows the lab policy of "opening up" only one item at a time; (2) "before opening another item, we will seal the item, bleach the bench top, change out paper, change gloves

before proceeding to the next item"; and (3) on September 23, 2013, she did not leave one item open and then open up another item from another case at the same time.

Amber Moss testified she is a forensic scientist at the DPS crime lab in Garland. In 2016, she performed a "re-analysis and re-interpretation" of the evidence from both crimes described above, using "newer techniques" than were used in the original analyses. Moss testified that although the analysis of the DNA on the outward-facing surface of the green condom "looked like it was potentially a three-person mixture," it "possibly is a four-person mixture" and "we don't know which it truly is." She stated that, regardless, her testing indicated N.L. and appellant are two of the persons whose DNA is in that mixture.

Richard Gary Cox testified he is N.L.'s father and lives in Florida. He stated that in mid-August 2013, N.L. and Trey came to stay with him for a week because N.L. was "getting concerned" about "problems she was having with the assault charge and rape charge." N.L. told him the person who raped her was appellant. Further, Cox stated N.L. told him (1) appellant "had called her up and said, 'You better not testify or I'll kill you, bitch. You won't live,' that kind of statement, several times"; (2) she was "scared to death" because appellant had "found her" and left a tarp and handcuffs on her porch; (3) appellant had told her that he "works with the police all the time" in doing vehicle repossessions and he "knows their ins and outs" and "they can't do shit"; and (4) she believed appellant was going to kill her and told Cox "[i]t's obvious that they can't protect me."

Adam Unnasch testified that at the time of the events in question, he was a research specialist with DPS. He stated that in connection with the investigation of the homicide in question, he analyzed cell phone records from April 2013 through September 2013 for a cell phone associated with appellant. Unnasch testified the records showed (1) appellant did not use his cell phone at all for calls or text messages on Saturday, September 7, 2013, and Sunday, September 8,

2013, and (2) on Monday, September 9, 2013, appellant did not use his cell phone prior to 11:13 a.m.

Chris Meehan testified he is an investigator for the Collin County Sheriff's Office and specializes in computer forensics. He stated that in connection with the homicide investigation in question, he examined the "Internet search history" for appellant's workplace computer. According to Meehan, between September 1, 2013, and September 6, 2013, multiple searches were conducted on that computer under appellant's user name for GPS coordinates that corresponded to the location of N.L.'s home and areas within approximately one mile of that location.

After the State rested its case, appellant moved for a directed verdict. That motion was denied by the trial court. Then, the defense called several witnesses.

Jonathan Chase Simmons testified that on the date of the shooting in question, he was a sophomore in high school and lived next door to N.L.'s home. At approximately 8:15 that morning, as he was pulling out of his driveway to go to school, Simmons saw a vehicle he had never seen before parked outside of N.L.'s home. According to Simmons, the vehicle was "a slightly older model truck" with a "red over/white under paint job." Simmons testified there was a person in the driver's seat who "appeared to be trying to recline or slink down" in order to "keep from being seen in the truck." Simmons stated he could not see that person's face. Additionally, Simmons testified there was a metallic sunshade in the front windshield, which seemed "odd" to him because the truck was "facing the opposite direction of the sun."

Robert Aguero testified he is the owner of a business that performs cell phone forensics and cell tower data analysis. He stated he analyzed the cell phone records of appellant from April 2013 through September 2013. According to Aguero, (1) "[o]ut of those 162 days, 72 of those dates there were either no phone calls made whatsoever or there were no calls made prior to 11 a.m." and (2) "in essence, 44 percent of the time there were no calls prior to 11 a.m."

Steven Alexander testified that on the date of the shooting in question, he lived in a house that was "one behind and three down" from N.L.'s home. At approximately 1:30 p.m., he was upstairs in his house and heard two loud "boom sounds" about five to eight seconds apart. He stated his first thought was that "it sounded like a gun." He testified he has "a habit of putting things in my phone when something odd happens" in order to "make a note of it" and he did so at that time. Further, he stated there was construction going on "to the addition behind us" that sometimes involved loud banging noises, but the sound he heard "was just a louder, different, deeper sound." On cross-examination, Alexander testified that when he was interviewed by a deputy about the noises in September 2013, he (1) told them he assumed the noises were from construction close to his home and (2) did not say anything to the deputy about gunshots.

Kyle Babcock stated he is the captain of the City of Melissa Police Department and was the lead investigator in the homicide case in question. He testified in part (1) DNA "can get on an object in a lot of different ways"; (2) appellant and N.L. "stay[ed] at each other's homes" during the time they dated and it is possible "[appellant's] DNA would be on some of [N.L.'s] items"; (3) the green condom in the wastebasket described above was visible before any other items were removed and was "right on top of the . . . fresh trash"; (4) he believes N.L.'s sexual encounter that resulted in the evidence described above happened either after Trey left for school "[o]r the previous day"; and (5) he spoke with the deputy who interviewed Alexander about the sounds he heard and "we believed what he heard at the time was construction noises from the subdivision being built behind [N.L.'s] residence." On cross-examination, Babcock testified (1) the fact that the green condom "was found toward the top of the trash" and "the wrapper for that condom [was] in the toilet water" indicated to him that the amount of time the condom had been there was "[n]ot long"; (2) that condom is "the one thing that has [appellant's] DNA on it"; and (3) dove hunting

season begins on approximately September 1 each year and a shotgun blast from a dove hunter "would carry" from nearby farmland areas and be audible in the neighborhood where N.L. lived.

Dr. Greg Hampikian testified he is a biology professor at Boise State University and does "private DNA consulting." He stated that through "transfer," it is "possible for DNA from someone to appear in a location where that person has never ever been." Additionally, he testified in part as follows:

> Q. Now, the idea of transfer from something at the crime scene, for example, like a bedsheet that had been shared by two individuals sometime in the past, and a DNA sample collected from that bedsheet sometime in the future, is it—it is possible that DNA can stay around for a long time on like a sheet or something like that?
>
> A. Yeah. I mean, I have—so I have casework that's, as I said 20, 30 years old. DNA does stay around. Now, if something is washed in really good detergent and bleach, you're probably going to get rid of most of the DNA. That doesn't mean it might not show up by the time you get it to the lab. It might touch the washing machine on the way out where some dirty clothes hit the rim and your clean sheet hits it. It's very hard to keep things completely free of DNA even in the lab where we're scrubbing and we're spraying bleach, et cetera. But that's not to say that it doesn't decrease with washing.
>
> . . . .
>
> Q. All right. Ask you to assume something in regards to the trash can. That it had been used over a period of time that included a time period when the homicide occurs and included a time period before that when two people use the same trash can. Is there a likelihood or is there ability for DNA to have survived in a trash can and then it to be transferred to an item that later gets in the trash can?
>
> . . . .
>
> A. Yeah, I mean, in bedrooms and bathrooms and just common sense that's where we put a lot of our biological material. So if you have a sexually active couple, there are 360 billion sperm cells in an ejaculate. Not all of them walk out of that room. Some of them end up on sheets, some of them end up on Kleenex, some of them end up on condoms. And so certainly bedrooms and bathrooms, we see a lot of biological staining in baskets. . . . Not many of us bleach our garage [sic] receptacles and if you have a wet stain and if it has blood or saliva or semen or mucus on it, it transfers quite easily. We've all seen wet tissue stick to a surface. So there's a lot of transfer that would occur in garbage cans, particularly those that are in bedrooms or bathroom.

During closing argument, the State argued on rebuttal, in part,

> You heard Ranger Mankin talk about the screw. He looked down in the truck and he sees what he recognized to be a grip screw from a gun. Now, this button down, cover your tracks, [sic] took his weapon apart after the murder. The truck is pristine,

> but he made a mistake and dropped one screw when he was disposing of that weapon.

Appellant objected to that argument on the ground that the prosecution was "arguing facts not in evidence." That objection was overruled by the trial court. Following the jury's verdict and the assessment of punishment as described above, this appeal was timely filed.

II. SUFFICIENCY OF THE EVIDENCE

A. Standard of Review

We apply *Jackson v. Virginia*, 443 U.S. 307 (1979), as the standard for reviewing the sufficiency of evidence. *See Winfrey v. State*, 393 S.W.3d 763, 768 (Tex. Crim. App. 2013). "In determining whether the evidence is legally sufficient to support a conviction, a reviewing court must consider all of the evidence in the light most favorable to the verdict and determine whether, based on that evidence and reasonable inferences therefrom, a rational fact finder could have found the essential elements of the crime beyond a reasonable doubt." *Id*. (quoting *Gear v. State*, 340 S.W.3d 743, 746 (Tex. Crim. App. 2011)); *see also Conner v. State*, 67 S.W.3d 192, 197 (Tex. Crim. App. 2001) ("When conducting a sufficiency review, we consider all the evidence admitted, whether proper or improper."). Further, when viewing the evidence in the light most favorable to the verdict, "the reviewing court is required to defer to the jury's credibility and weight determinations because the jury is the sole judge of the witnesses' credibility and the weight to be given their testimony." *Winfrey*, 393 S.W.3d at 768 (citing *Brooks v. State*, 323 S.W.3d 893, 899 (Tex. Crim. App. 2010)).

We permit juries to draw multiple reasonable inferences from facts as long as each is supported by the evidence presented at trial. *Merritt v. State*, 368 S.W.3d 516, 525 (Tex. Crim. App. 2012). The jury is not permitted to draw conclusions based on speculation because doing so is not sufficiently based on facts or evidence to support a finding beyond a reasonable doubt. *Id*. "[A]n inference is a conclusion reached by considering other facts and deducing a logical

consequence from them." *Hooper v. State*, 214 S.W.3d 9, 16 (Tex. Crim. App. 2007). "Speculation is mere theorizing or guessing about the possible meaning of facts and evidence presented." *Id*. When the record supports conflicting inferences, we presume the jury resolved the conflicts in favor of the verdict and defer to that determination. *Merritt*, 368 S.W.3d at 525–26.

Circumstantial evidence alone can be sufficient to establish guilt. *Hooper*, 214 S.W.3d at 13. "In circumstantial evidence cases, it is not necessary that every fact and circumstance 'point directly and independently to the defendant's guilt; it is enough if the conclusion is warranted by the combined and cumulative force of all the incriminating circumstances.'" *Temple v. State*, 390 S.W.3d 341, 359 (Tex. Crim. App. 2013) (quoting *Johnson v. State*, 871 S.W.2d 183, 186 (Tex. Crim. App. 1993)). Although motive and opportunity are not elements of murder and are not alone sufficient to prove identity, they are circumstances indicative of guilt. *Id*. at 360.

B. Applicable Law

Section 19.03(a)(2) of the Texas Penal Code provides in part that a person commits capital murder if he intentionally commits murder in the course of committing or attempting to commit retaliation. TEX. PENAL CODE ANN. § 19.03(a)(2) (West Supp. 2017). A person commits murder if he "intentionally or knowingly causes the death of an individual." *Id*. § 19.02(b)(1).

C. Application of Law to Facts

In his first issue, appellant asserts the evidence is insufficient to prove beyond a reasonable doubt that he murdered N.L. According to appellant,

> [M]otive and opportunity are not sufficient to prove guilt. And in [this] case, the State's only other evidence—touch DNA from [appellant] that may or may not have been left in [N.L.'s] home the day of her murder, and a screw found in [appellant's] truck that may or may not have come from a gun—doesn't make up the difference. Only by speculation can [appellant] be identified as the murderer.

Specifically, appellant contends (1) while the State "focused most" on "touch DNA matching [appellant] found on a condom in [N.L.'s] bathroom trash can," "a different man's DNA was found

inside the condom, and none of the many other samples found in the home matched [appellant]"; (2) in light of the evidence that appellant was "obsessive-compulsive" and "incredibly neat and orderly," it is "far more likely that [appellant's] touch DNA landed on another man's used condom by transference, or contamination"; and (3) "[appellant] lived with [N.L.] when they were engaged to be married" and "[appellant's] DNA could have lingered in the trash can or it could have lingered on the complainant's bedsheets, transferring to the condom there." Additionally, in his reply brief in this Court, appellant asserts in part (1) "a witness saw a truck in front of the complainant's home that matched that of disgraced former Detective Scott Greer"; (2) "[N.L.'s] neighbor heard two loud 'booms' at a time when [appellant] had an alibi"; and (3) "the State ignores the very nature of transference; just as [appellant's] touch DNA could have transferred from the complainant's bedsheets to a used condom, it could have transferred from something else to the bedsheets." In support of his arguments, appellant cites *Winfrey*, 393 S.W.3d at 763, and *Ingerson v. State*, 508 S.W.3d 703 (Tex. App.—Fort Worth 2016, pet. granted), both of which are capital murder cases in which the jury's verdict was reversed on appeal based on insufficient evidence.

The State argues that "[a]lthough the evidence was circumstantial, the combined and cumulative effect of the incriminating evidence pointed to [appellant's] guilt," and "[t]hus, a rational trier of fact would have found guilt beyond a reasonable doubt." Specifically, the State asserts, "The victim expressed concern that [appellant] was going to kill her because she reported the sexual assault, DNA evidence connected [appellant] to the victim's home where she had moved in an effort to hide from [appellant], [appellant] had tracked the victim to that home, and [appellant] had photographs of and an empty case for handguns like that used to kill the victim."

In *Winfrey*, a murder victim was found in his home with numerous stab wounds and multiple blunt-force injuries. *See* 393 S.W.3d at 764. Megan Winfrey attended the high school

where the victim worked and was acquainted with him. After an investigation that included dog-scent lineups, Winfrey and her father and brother were charged with the murder. *Id*. at 765. A jury convicted Winfrey of "capital murder during the course of robbery" and "conspiracy to commit capital murder." *Id*. The trial court's judgment was affirmed by the court of appeals. *Id*. However, the Texas Court of Criminal Appeals reversed the court of appeals and rendered acquittals on both counts. *Id*.

In her appeal to the court of criminal appeals, Winfrey argued that unless the dog-scent lineup evidence was treated as "primary evidence," there was "no evidence which implicates [Winfrey] in this murder either directly or by application of the law of parties." *Id*. at 767. The court of criminal appeals stated in part (1) in a prior opinion respecting Winfrey's father's involvement in the same murder, "[w]e concluded that dog-scent lineups, 'when used alone or as primary evidence, are legally insufficient to support a conviction,'" *id*. at 768 (quoting *Winfrey v. State*, 323 S.W.3d 875, 884 (Tex. Crim. App. 2010) (hereinafter "*Richard Winfrey*")); (2) although dog-scent lineup evidence "is properly considered in a review of the sufficiency of the evidence," the role of such evidence "is merely supportive," *id*. at 770; and (3) "[w]e do observe that the dog-scent lineup evidence, with the dog alerting to [Winfrey's] scent on [the victim's] clothing, simply indicates that [Winfrey] had had some contact with [the victim's] clothing, although the timing, circumstances, and degree of that contact cannot be determined," *id*. at 768. Then, that court conducted a review of "all of the evidence in the light most favorable to the verdict," with the dog-scent lineup evidence being "'merely supportive' of the remainder of the evidence." *Id*. at 770.

The evidence considered by the court of criminal appeals included testimony that (1) "[Winfrey] believed that [the victim] had money in his home, and she wanted it"; (2) Winfrey's father related specific information about the murder to his jail cell-mate, Campbell, including that one of the father's children had let the father into the house, that the victim had been stabbed

repeatedly, and that guns had been stolen from the house, "whereupon law-enforcement officials, who had not known that guns were missing, then talked to [the victim's] relatives and confirmed that guns were missing"; (3) "when [Winfrey] heard that her brother had been arrested for the murder, she asked her boyfriend to take her to her ex-husband's house, allegedly to discuss their daughter, but instead discussed only a possible alibi for the night of the murder"; (4) "after her ex-husband was subpoenaed, [Winfrey] called his mother to find out if he was going to testify"; (5) "when [Winfrey] learned that law-enforcement personnel had found a pubic hair at the crime scene, she shaved herself, allegedly to prevent the taking of a sample of her pubic hair"; (6) "[Winfrey] told her boyfriend that she went to [the victim's] house because 'it was an easy lick,' which the boyfriend construed to mean [Winfrey] thought she would get money"; and (7) "there was a drop of blood underneath and a drop on top of the overturned vacuum cleaner in the closet," which the State suggested "allowed the trier of fact to 'draw the inference that these drops and their positioning could have occurred when the murderer was in the closet taking the guns and looking for items to steal.'" *Id*. at 770–71.

The court of criminal appeals stated that evidence appeared "more speculative than inferential" as to Winfrey's guilt because (1) "[Winfrey's] expression of knowledge that [the victim] had money in his home that she wanted and that she went to his house because 'it was an easy lick' does not reveal any action on her part to actually kill [the victim] and take his money, and it is even less incriminatory when we consider that the police investigation was unable to determine that any money had been taken from [the victim] during the course of the murder"; (2) Campbell did not state which one of the Winfrey children had purportedly let Winfrey's father into the house and did not "specifically inculpate [Winfrey]"; (3) Campbell's testimony included repeated assertions that Winfrey's father had described to him "how the victim's penis had been cut off and 'crammed into' the victim's mouth," and "[i]f that claim had been fact, it surely would

have been noted by the medical examiner, but was not"; (4) there was "no evidence indicating when and under what circumstances" the victim's guns were removed from his home or that such guns were removed during the course of the murder; (5) "[t]he evidence of [Winfrey's] shaving of her pubic hair seems much less significant in light of her unchallenged testimony that she regularly shaved it, her later provision of the requested sample, and the determination that her hair did not match a hair recovered from the scene"; (6) "we do not perceive any indicia of guilt" from "simply discussing a possible alibi for the time of the murder" or "in [Winfrey] contacting her ex-husband's mother to determine whether he was going to testify at trial"; and (7) "[t]he state's suggestion of an appropriate inference drawn from blood drops on the vacuum cleaner supports no connection to [Winfrey] at all because the DNA of those blood drops did not match any of the Winfreys." *Id*. at 771–72. Further, that court stated "[b]asing a finding of [Winfrey's] guilt on this evidence and all of the other evidence is, at best, 'mere theorizing or guessing' about [Winfrey's] possible guilt rather than a reasonable inference based upon evidence and facts presented." *Id*. at 772. The court of criminal appeals concluded, "After reviewing all of the evidence in the light most favorable to the guilty verdict, we hold that the evidence merely raises a suspicion of [Winfrey's] guilt and is legally insufficient to support a conviction of capital murder beyond a reasonable doubt." *Id*. at 772–73.

In *Ingerson,* the bodies of two murder victims, Robyn Richter and Shawna Ferris, were found in Richter's SUV in a restaurant parking lot. *See* 508 S.W.3d at 731. Each victim had a single gunshot wound to the head. *Id*. Fred Ingerson, who was acquainted with both victims, was charged and convicted of capital murder. *Id*. On appeal, the State contended the following "items of evidence" established guilt beyond a reasonable doubt: (1) Ingerson was romantically interested in Richter, but Richter had "disingenuous feelings towards him" and "was using Ingerson's feelings for her own financial gain"; (2) Ingerson's presence at the location and time of the

murders; (3) Ingerson's ownership of a gun of the same make and caliber as the murder weapon; (4) the presence of a gun under the driver's seat in Ingerson's vehicle the day after the murders; (5) the presence of gunshot residue under the driver's seat of Ingerson's car and on the pants Ingerson wore the night of the murders; (6) Ingerson's alleged "suspicious activity" following the murders; and (7) "incriminating statements" by Ingerson to police and others. *Id*. at 732.

The court of appeals reasoned in part (1) the evidence showed only a "friendly" relationship between Ingerson and Richter and "[n]o evidence supports the State's contention that Ingerson was driven to murder because he was offended by Richter's conduct towards him"; (2) Ingerson's presence outside the restaurant and being the last person seen with Richter and Ferris "without more, is insufficient to sustain a conviction as a party to the offense"; (3) testing "definitively ruled out any Smith & Wesson as the murder weapon," but showed the murder weapon could have been a Colt revolver; (4) "the State itself established that the .38 Colt bobbed-hammer pistol once owned by Ingerson was not the murder weapon"; (5) because the witness who saw a gun in Ingerson's vehicle originally testified it was a Smith & Wesson that had a "hammer," then stated a year later that the gun was a Colt "bobbed-hammer" pistol, that testimony "fall[s] short of proof beyond a reasonable doubt that the murder weapon was under the seat of Ingerson's car" on the date of the murders; (6) the gunshot residue in Ingerson's car and on his pants could be explained by the presence of a gun in his vehicle and "was not directly linked in any way to the murders"; and (7) although Ingerson was "confused as to the time that he actually left [the restaurant] because he believed that the bar had closed at 11 p.m. instead of midnight," "[t]hat confusion falls short of being incriminatingly suspicious activity." *Id*. at 732–35. That court stated, in summary, (1) "[t]he sole and only fact proven by the State beyond a reasonable doubt is that Ingerson was the last person seen at Richter's vehicle" and (2) the State's other items of evidence "amount to speculation and are not grounded in facts." *Id*. at 736. Then, that court concluded that after reviewing all the

circumstantial evidence and any reasonable inferences supportable from that evidence, the evidence was insufficient to support Ingerson's conviction. *Id.*

Unlike *Ingerson*, the case before us includes (1) evidence of motive, (2) evidence of threats and tracking by appellant, and (3) touch DNA of appellant at the crime scene. Also, unlike in *Ingerson*, neither of the .22-caliber firearms shown in the photograph found in appellant's home was excluded as the murder weapon. Therefore, *Ingerson* is distinguishable from the case before us.

Further, *Winfrey* did not involve touch DNA evidence, but rather dog-scent lineup evidence. *See* 393 S.W.3d at 767. The court of criminal appeals's conclusion in *Winfrey* was based on its prior opinion in *Richard Winfrey*, which case "pertain[ed] to canines used to discriminate among human scents in order to identify a specific person in a lineup" and presented the question of "whether dog-scent lineup evidence alone can support a conviction beyond a reasonable doubt." *Richard Winfrey*, 323 S.W.3d at 883, 884–85. Specifically, *Richard Winfrey* involved a scent lineup conducted nearly three years after the victim's murder that compared "scent samples" from clothing the victim was wearing at the time of his death to samples from six individuals. *Id.* at 877.

As described by the dissent in the case before us, the court of criminal appeals stated in *Richard Winfrey* that because scent transfers with ease from one person or object to another, "the dog-scent lineup proves only that appellant's scent was on the victim's clothes, not that appellant had been in direct contact with the victim."[3] *Id.* at 881–82. The dissent states, "Accordingly, the court of criminal appeals concluded that there was legally insufficient evidence to support Richard's conviction because even a strong suspicion of guilt is insufficient to convict." However, contrary to the dissent's description of *Richard Winfrey*, the analysis in that case did not end with

[3] Additionally, the dissent states that in *Richard Winfrey*, the evidence respecting "transference" included a witness who "analogized scent transference to skin DNA transference that can occur when a person touches someone and that person touches something else." However, while the evidence in that case included testimony that shaking hands can result in transfer of "skin cells" to a third person upon subsequent contact, there was no testimony respecting any type of "DNA transference." *See id.* at 877 n.4.

the court's statements respecting transference. Rather, the court of criminal appeals also stated in part (1) Richard "did not match the DNA profile obtained from the crime scene" and (2) a deputy who testified for the State "recognized the limits of the scent lineup in his testimony when he stated that: 'We never convict anybody solely on the dog. It is illegal in the State of Texas . . . . You cannot convict solely on the dog's testimony.'" *Id*. at 882. Further, the court of criminal appeals specifically summarized the evidence as follows: "At most, the evidence here shows: (1) appellant indicated [during a pre-arrest interview by law enforcement officers] that he believed he was the number one suspect in a murder investigation; (2) appellant shared information with [his jail cellmate] that appellant claimed to have heard about the murder; and (3) appellant's scent was on the victim's clothes." *Id*. Additionally, the dissent entirely omits any mention that the court's analysis in *Richard Winfrey* also addressed "the science underlying canine-scent lineups," which "has been questioned." *Id*. at 882. In reaching its conclusion that "dog-scent lineup evidence alone" is insufficient to establish a person's guilt beyond a reasonable doubt, the court of criminal appeals stated in part that while "[i]n thousands of cases, canines and their handlers have performed with distinction," "we acknowledge the invariable truth espoused by [U.S. Supreme Court] Justice Souter that '[t]he infallible dog, however, is a creature of legal fiction.'" *Id*. at 883–84. Unlike *Winfrey* and *Richard Winfrey*, the case before us does not involve a conviction supported solely by dog-scent lineup evidence. Therefore, we do not find *Winfrey* or *Richard Winfrey* instructive. *See id*.

As the dissent points out, the touch DNA evidence in the case before us does not show the "timing, circumstances, and degree" of contact from which that evidence resulted. *See Winfrey*, 393 S.W.3d at 768. However, as described above, the record shows (1) appellant was not indicted for the March 2013 sexual assault of N.L. until September 27, 2013; (2) in June 2013, N.L. and her son moved to Melissa "mostly to escape [appellant]"; (3) appellant had threatened to kill N.L.

if she testified in the sexual assault case and she was "scared to death" when she believed he had discovered where she lived; (4) in mid-August, a blue tarp and handcuffs similar to those used in the March 2013 sexual assault were left on N.L.'s front porch; (5) during the week before N.L. was killed, searches were conducted on appellant's work computer under his username to locate GPS coordinates at and around N.L.'s home; (6) N.L. was shot with a .22-caliber handgun sometime between 8 a.m. and 4:30 p.m. on September 9, 2013; (7) on that date, the front door was unlocked when N.L.'s son arrived home from school, screws possibly were missing from the latch on N.L.'s bedroom window, and a neighbor saw a person slouched down in a truck sitting in front of N.L.'s house at 8:15 a.m.; (8) although the truck seen by the neighbor matched the description of Greer's truck, Greer's time sheets showed he was working at that time; (9) appellant stopped using his cell phone several days before the date N.L. was killed and resumed cell phone use at 11:13 a.m. on the date of the killing; (10) appellant did not have a confirmed alibi for that morning; (11) during a search of appellant's home, police found a photograph of a gun case containing two .22-caliber firearms, with suppressors; (12) in a storage unit leased by appellant's ex-wife, police found a gun case similar to the case in that photograph that contained one suppressor, but no .22-caliber firearms; (13) during a search of appellant's truck, police found a small screw on the front floorboard that was similar to the type used in guns; (14) at the crime scene, appellant's touch DNA was found on the outer-facing surface of a condom that was sitting atop "fresh trash" in the master bathroom wastebasket, which was lined with a plastic liner; and (15) although multiple items from the crime scene were tested, no other DNA of appellant was found at the scene.

"In circumstantial evidence cases, it is not necessary that every fact and circumstance 'point directly and independently to the defendant's guilt; it is enough if the conclusion is warranted by the combined and cumulative force of all the incriminating circumstances.'" *Temple*, 390 S.W.3d at 359 (quoting *Johnson*, 871 S.W.2d at 186). On this record, considering all of the

evidence in the light most favorable to the verdict, we conclude that, based on that evidence and reasonable inferences therefrom, a rational jury could have found the essential elements of the crime beyond a reasonable doubt. *See id*. at 361; *see also Merritt*, 368 S.W.3d at 527 (reversing court of appeals' conclusion of insufficient evidence because court of appeals "improperly acted as a thirteenth juror when it speculated and focused on the existence of a reasonable hypothesis inconsistent with the guilt of the accused, thereby repudiating the jury's prerogative to weigh the evidence, to judge the credibility of the witnesses, and to choose between conflicting theories of the case").

We note that the dissent focuses heavily on the fact that "DNA can be transferred from one source or location to another source or location" and "finding a person's DNA at a location . . . does not prove how or when the DNA got there." According to the dissent, "This is notable given the undisputed fact that N.L. had previously lived with appellant in his house and had moved her belongings from there to the house where she was shot." However, the record (1) is silent as to when N.L. and appellant lived together and as to what belongings she retained after moving out of his home, and (2) shows N.L. lived in at least one other location in Frisco between the time she lived with appellant and the time she moved to the house in Melissa. Further, the dissent does not expressly consider the evidence showing (1) DNA evidence can "decrease with washing"; (2) the green condom containing appellant's touch DNA was found atop "fresh trash" in a trash can with a plastic liner; and (3) although multiple items from the crime scene were tested, no other DNA of appellant was found at the scene.

Additionally, the dissent states "it is undisputed that appellant was required to give up his guns after his sexual assault arrest and the gun case was found locked up in his ex-wife's off-site storage unit." However, although Mankin testified appellant "had been ordered to get rid of his

guns" pursuant to the protective order obtained by N.L., no evidence in the record specifically addresses whether he did so.

As described above, "an inference is a conclusion reached by considering other facts and deducing a logical consequence from them." *Hooper*, 214 S.W.3d at 16. Because the evidence in the record supports conflicting inferences respecting appellant's presence at the crime scene, we presume the jury resolved the conflicts in favor of the verdict and defer to that determination. *Merritt*, 368 S.W.3d at 525–26. On this record, we cannot agree with the dissent that the jury acted irrationally in finding the essential elements of the charged offense beyond a reasonable doubt. *See id*.

We decide against appellant on his first issue.

III. DENIAL OF MOTION TO SUPPRESS RESULTS OF INVENTORY SEARCH

A. Standard of Review

In reviewing a trial court's ruling on a motion to suppress, an appellate court must apply an abuse of discretion standard and overturn the trial court's ruling only if it is outside the zone of reasonable disagreement. *Martinez v. State*, 348 S.W.3d 919, 922 (Tex. Crim. App. 2011) (citing *State v. Dixon*, 206 S.W.3d 587, 590 (Tex. Crim. App. 2006)). We give almost complete deference to the trial court's determination of historical facts and mixed questions of law and fact that rely upon an assessment of the credibility and demeanor of a witness, but apply a de novo standard of review to pure questions of law and mixed questions that do not depend on credibility determinations. *Id*. at 923. We must uphold the trial court's ruling if it is reasonably supported by the record and correct under any applicable theory of law. *Wade v. State*, 422 S.W.3d 661, 667 (Tex. Crim. App. 2013); *Hereford v. State*, 339 S.W.3d 111, 117–18 (Tex. Crim. App. 2011).

B. Applicable Law

The Texas and United States constitutions permit an inventory search conducted pursuant to a lawful impoundment of a vehicle. *See South Dakota v. Opperman*, 428 U.S. 364, 375–76 (1976); *Benavides v. State*, 600 S.W.2d 809, 810 (Tex. Crim. App. 1980). The State bears the burden of showing an impoundment is lawful. *Mayberry v. State*, 830 S.W.2d 176, 180 (Tex. App.—Dallas 1992, pet. ref'd).

Reasonable cause for impoundment of a vehicle may exist when the driver is removed from his automobile and placed under custodial arrest and his property cannot be protected by any means other than impoundment. *Benavides*, 600 S.W.2d at 811; *Lagaite v. State*, 995 S.W.2d 860, 865 (Tex. App.—Houston [1st Dist.] 1999, pet. ref'd). Factors to be considered in determining the reasonableness of an impoundment following a custodial arrest include whether (1) someone was available at the scene of the arrest to whom the police could have given possession of the vehicle, (2) the vehicle was impeding the flow of traffic or was a danger to public safety, (3) the vehicle was locked, (4) the detention of the arrestee would likely be of such duration to require the police to take protective measures, (5) there was some reasonable connection between the arrest and the vehicle, and (6) the vehicle was used in the commission of another crime. *Mayberry*, 830 S.W.2d at 179–80; *Josey v. State*, 981 S.W.2d 831, 843 (Tex. App.—Houston [14th Dist.] 1998, pet. ref'd); *Redmond v. State*, No. 05-09-01461-CR, 2011 WL 1142915, at *2 (Tex. App.—Dallas Mar. 30, 2011, pet. ref'd) (not designated for publication).

C. Application of Law to Facts

In his second issue, appellant contends the trial court abused its discretion by denying his motion to suppress the results of the inventory search of his truck. Specifically, appellant argues "[t]he Frisco police policy of 'impound whenever' is plainly unlawful" and "there was no other

lawful basis for impoundment." The State responds in part "[t]he impoundment was legal and the inventory search was proper."

With respect to the factors described above, appellant asserts that "at most, two of the factors support[] impoundment." Specifically, appellant acknowledges that although the record does not show whether police asked appellant about the availability of someone who could take possession of the truck, peace officers need not independently investigate possible alternatives to impoundment absent some objectively demonstrable evidence that alternatives, in fact, exist. *See Harris v. State*, 468 S.W.3d 248, 255 (Tex. App.—Texarkana 2015, no pet.) (citing *Mayberry*, 830 S.W.2d at 180). Also, appellant does not dispute there was a connection between his truck and his arrest for driving without a front license plate.

As to his contention that none of the remaining factors support impoundment, appellant argues in part that "[c]ontrary to Sartain's testimony that he feared Adams might 'stay in jail a month,' Adams's arrest was not likely to result in prolonged detention—operating a vehicle without a license plate is a misdemeanor punishable by a fine not to exceed $200." However, the record shows appellant was a suspect in a murder investigation and Mankin's intent was to approach appellant during the traffic stop and "bring him in voluntarily and talk to him." Thus, the record contains evidence to support a finding that "the detention of the arrestee would likely be of such duration to require the police to take protective measures."

Additionally, appellant contends "[e]ven if Adams were to be detained for a significant amount of time for driving without a front license plate, the Seventh Circuit Court of Appeals has rejected that impoundment is thus permissible for the liability purposes of the police, as Officer Sartain suggested." In support of that position, appellant cites *United States v. Duguay,* 93 F.3d 346, 352 (7th Cir. 1996). However, *Duguay* involved a vehicle that was impounded after the

defendant's arrest even though two individuals who could have taken possession of the vehicle were present at the scene. *Id*. at 353. Therefore, we do not find *Duguay* instructive.

On this record, we conclude the trial court did not abuse its discretion by concluding the impoundment in this case was proper. *See Garza v. State*, 137 S.W.3d 878, 883–84 (Tex. App.—Houston [1st Dist.] 2004, pet. ref'd) (impoundment was reasonable where evidence showed reasonable connection between arrest and vehicle, no one was present at scene to take possession of vehicle, and detention would likely be of such duration as to require protective measures); *see also Mayberry*, 830 S.W.2d at 179–80.

We decide against appellant on his second issue.

IV. CONCLUSION

We decide appellant's two issues against him. The trial court's judgment is affirmed.

/Douglas S. Lang/
DOUGLAS S. LANG
JUSTICE

Whitehill, J., dissenting

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Court of Appeals
Fifth District of Texas at Dallas

JUDGMENT

MICHAEL KEVIN ADAMS, Appellant	On Appeal from the 366th Judicial District Court, Collin County, Texas
No. 05-16-01361-CR V.	Trial Court Cause No. 366-81115-2014.
THE STATE OF TEXAS, Appellee	Opinion delivered by Justice Lang, Justices Brown and Whitehill participating.

Based on the Court's opinion of this date, the judgment of the trial court is **AFFIRMED**.

Judgment entered this 24th day of May, 2018.