Opinion issued July 7, 2020

In The

Court of Appeals

For The

First District of Texas

NO. 01-18-00617-CR

NO. 01-18-00618-CR

NO. 01-18-00619-CR

VISLANDA FRAGA, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the County Criminal Court No. 3
Denton County, Texas[1]
Trial Court Case Nos. CR-2017-04223-C, CR-2017-06431-C,
CR-2017-06433-C

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[1] Pursuant to its docket equalization authority, the Supreme Court of Texas transferred this appeal to this Court. *See* Misc. Docket No. 18–9083 (Tex. June 19, 2018); *see also* TEX. GOV'T CODE ANN. § 73.001 (authorizing transfer of cases). We are unaware of any conflict between the precedent of the Court of Appeals for the Second District and that of this Court on any relevant issue. *See* TEX. R. APP. P. 41.3.

MEMORANDUM OPINION

A jury found appellant, Vislanda Fraga, guilty of the misdemeanor offenses of interference with public duties,[2] criminal trespass,[3] and unlawful restraint,[4] and the trial court assessed her punishment at confinement for 180 days, confinement for 365 days, and confinement for 270 days, to run concurrently. In her sole issue, appellant contends that the evidence is insufficient to support her conviction for the offense of criminal trespass. Related to appellant's convictions for the offenses of interference with public duties and unlawful restraint, appellant's appointed counsel on appeal has moved to withdraw and filed a brief stating that the record in each case presents no reversible error and appellant's appeals lack merit and are frivolous.[5]

We affirm.

Background

The complainant, Anayely Vega Zarraga, testified that in December 2016, she lived in an apartment in Denton County, Texas and was married to Rubin Mauricio

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2 *See* TEX. PENAL CODE ANN. § 38.15(a)(1), (b); appellate cause no. 01-18-00617-CR; trial court cause no. CR-2017-04223-C.

3 *See* TEX. PENAL CODE ANN. § 30.05(a)(2), (d); appellate cause no. 01-18-00618-CR; trial court cause no. CR-2017-06431-C.

4 *See* TEX. PENAL CODE ANN. § 20.02(a), (c); appellate cause no. 01-18-00619-CR; trial court cause no. CR-2017-06433-C.

5 *See Anders v. California*, 386 U.S. 738 (1967).

("Rubin"). Appellant is Rubin's mother. On December 16, 2016, Rubin was not living at the complainant's apartment; he had moved out about a week before that day. According to the complainant, her name was on the lease agreement for the apartment, and although she had added Rubin to the lease agreement at one point, she had "t[aken] him off the contract" before December 16, 2016.

Late at night on December 16, 2016, the complainant was in her apartment alone when appellant knocked on her door. The complainant asked appellant what she wanted, and appellant responded: "To speak with you about my son, Rubin, and over the relationship that's happening." (Internal quotations omitted.) The complainant opened the door to allow appellant to come inside the apartment, but Rubin also appeared and entered the apartment, which worried the complainant. Within minutes of appellant and Rubin entering the complainant's apartment, "things g[o]t violent." Rubin was "really angry." The complainant loudly told appellant and Rubin to leave the apartment about twelve to fifteen times, but appellant did not leave. When the complainant tried to leave the apartment, Rubin and appellant prevented her from doing so by physically blocking the door. The complainant did not give appellant consent to block the apartment's door. She felt afraid and intimidated, and she believed that appellant had blocked the door "on purpose." Rubin also "shoved [the complainant] against the wall so [that she]

wouldn't go out the door." According to the complainant, appellant directed Rubin to assault her that night, and Rubin "grabbed and pushed her" and grabbed her neck.

About Rubin, the complainant testified that he had assaulted her "a lot" during December 2016. On December 6, 2016, Rubin assaulted the complainant and caused a bite mark. He assaulted her again on December 9, 2016. The complainant told Rubin that he needed to move out of her apartment. Rubin then moved all of his belongings and clothing out of the apartment and began living with appellant.

The complainant also stated that on December 15, 2016, Rubin and two other males tried to break into her apartment. She called for emergency assistance, but Rubin was gone when the law enforcement officers arrived. The complainant stated that Rubin was not allowed in her apartment on either December 15, 2016 or December 16, 2016. And she "pa[id] the bills" and for "everything" related to the apartment. Rubin did not "pay the bills."

While viewing photographs of the apartment that the trial court admitted into evidence at trial, the complainant pointed out her clothing, which she stated was present in the apartment on December 16, 2016. The complainant also noted that only her toothbrush appeared in the photograph of the apartment's bathroom because Rubin was no longer living at the apartment.

Lewisville Police Department ("LPD") Officer A. Barletta testified that on December 16, 2016, around 11:30 p.m., he, along with LPD Officer Robey,

responded to a call involving family violence at an apartment in Denton County, Texas. Upon arrival, Barletta and Robey contacted the complainant's "brother," who had called for emergency assistance to report that the complainant was "getting assaulted by [her] husband." Barletta and Robey followed the complainant's brother to the apartment, and after they knocked on the door, the complainant answered. The complainant was "crying out loud," with "tears coming down her face," but she complied with the officers' request to step outside the apartment. In Barletta's opinion, the complainant was not being restrained at the time she opened the door.

Officer Barletta and Officer Robey then entered the apartment and found appellant and Rubin sitting at the table. Barletta told appellant and Rubin: "Y'all come out to me, come out to me, come out here and let's talk about what was going on." (Internal quotations omitted.) Although appellant first complied with Barletta's request and starting walking toward the door of the apartment, Rubin did not. Barletta stated that he did not know whether appellant ever made it outside the apartment because Rubin "took a swing" at him, and Rubin and Barletta started fighting.

Officer Barletta further testified that while he and Officer Robey tried to place Rubin in handcuffs, other law enforcement officers arrived at the apartment because an emergency button on Barletta's radio had been pushed during the fight with Rubin. According to Barletta, if a law enforcement officer is in an emergency

situation and needs assistance, he can push the button on his radio which "sends a tone out to dispatch and other officers [will] come." After additional law enforcement officers arrived at the apartment and Rubin was "dry-stunned . . . with [a] taser," Barletta placed Rubin in handcuffs for safety purposes. Barletta stated that Rubin, at the time, appeared to be "under [the influence of] some kind of narcotic or something" and was screaming and in "some kind of excited delirium." Rubin was eventually transported to a hospital to be evaluated.

LPD Officer J. Reid testified that, on December 16, 2016, at around 11:30 p.m., he was on duty with LPD Officer J. Ruff when they responded to an officer-distress emergency call at an apartment in Denton County, Texas. Reid stated that the emergency button on the radio of another law enforcement officer had been activated, which required a quick response as it "sounded like a struggle [was happening] over the radio." According to Reid, he and Ruff were "actively working at th[e] time" of the call and the State of Texas and the LPD gave them the authority to respond to such calls as well as "the authority to deal with situations in an officer assist capacity."

Officer Reid further testified that, upon arrival at the apartment, he "jumped out of the [patrol] car," heard screaming, and ran to the doorway of the apartment. Reid saw appellant standing in the middle of the doorway to the apartment. He loudly told appellant to move, but she did not. At the time, appellant was looking at

Reid, and he had to physically move her to the side. Reid then "inch[ed] sideways by [appellant] to get inside the apartment" because he could not fully move her; appellant still blocked about seventy-five percent of the doorway and pushed against him. Reid stated that he was "trying to respond to the [law enforcement] officer that was fighting with [a] person . . . inside the apartment" and it was not easy for him to get around appellant. After Reid passed by appellant, appellant remained in the doorway and yelled at law enforcement officers because Rubin was "being pinned down" and "tased."

According to Officer Reid, a reasonable person would have heard him tell appellant to move and a reasonable person would have moved out of the doorway. Reid stated that appellant impeded his progress and ability to get into the apartment and interfered with his public duties. Reid stated that he had listened to a "body mic [audio recording] of the incident," and on the recording, appellant, while blocking the door to the apartment, was warned that if she continued to interfere, she would be arrested.

Officer Ruff testified that he is a member of the LPD patrol division and his primary duty is responding to calls for emergency assistance. The State of Texas and the LPD give him the authority to respond to calls for emergency assistance. On December 16, 2016, around 11:30 p.m., Ruff was on duty, wearing a law enforcement officer's uniform and badge, and driving a marked patrol car, when he

responded to a call for officer assistance at an apartment, along with Officer Reid. Upon arrival, Ruff followed behind Reid to the apartment. Ruff could hear yelling and screaming and a fight occurring inside the apartment. As Ruff and Reid approached the doorway to the apartment, appellant stood directly in the doorway—which was the only doorway into the apartment. There was not enough room for a "normal[-sized] person to pass" because appellant was blocking the entire doorway.

Officer Ruff further testified that although Officer Reid moved appellant "slightly" to the side and "slid[] by [her] . . . sideways" through the doorway, when Ruff arrived at the door and asked appellant to move, she refused. Ruff asked appellant to move for a second time and she stated that she was not going to move. Ruff could hear fighting inside the apartment and law enforcement officers yelling: "Stop resisting, get down, put your hands behind your back." (Internal quotations omitted.) Ultimately, Ruff had to physically moved appellant out of the doorway so that he could enter the apartment and help the law enforcement officers inside. After entering the apartment, Ruff helped detain Rubin in the apartment.

Officer Ruff stated that he gave appellant at least three or four verbal commands to "[m]ove, get out of the way, [and] move." He also heard Officer Reid tell appellant to move. Even so, after Reid moved past appellant and into the apartment, appellant moved back into the doorway of the apartment to block Ruff's entrance. Ruff testified that appellant impeded or interfered with his ability to enter

the apartment and respond to the call for emergency assistance from a law enforcement officer. According to Ruff, appellant's "behavior in not moving after [his] verbal commands constitute[d] a gross deviation from the standard of care of an ordinary person given the circumstances."

LPD Officer T. Conner testified that on December 16, 2016, at around 11:30 p.m., he responded to a call for emergency assistance from an apartment in Denton County, Texas after a law enforcement officer's emergency button "sounded." When Conner arrived at the apartment, he saw Officer Ruff telling appellant to "get back" and "pushing [appellant] back off of him." Appellant was looking at Ruff at the time, but she did not appear to be complying with Ruff's instructions, although Conner heard Ruff twice give appellant verbal commands. Conner noted that appellant and Ruff were already outside the doorway when he arrived, so he did not personally see appellant interfering with Ruff's ability to enter the apartment. Conner also testified that the initial disturbance that brought law enforcement officers to the apartment was between a wife and a husband. According to Conner, the husband had "gone out of the apartment and then decided to come back."

Rubin testified that appellant is his mother. In 2016, he was married to the complainant, and he assaulted the complainant around December 6, 2016 continuing until December 16, 2016. Rubin later pleaded guilty to committing the felony

offense of continuous violence against the family,[6] and upon conviction, the trial court in that proceeding assessed his punishment at confinement for four years.

Rubin further stated that on December 16, 2016, he and appellant went to the apartment where he used to live with the complainant. At the time, the complainant was there by herself. Upon arrival, appellant knocked on the door and both Rubin and appellant entered the apartment. While inside the apartment, Rubin assaulted the complainant when appellant was present. According to Rubin, appellant did not block the complainant from leaving the apartment, but he did.[7]

Rubin testified that when law enforcement officers arrived at the apartment, he pushed one of the officers in self-defense. And while the law enforcement officers were inside the apartment dealing with him, appellant and the complainant were outside with another law enforcement officer. Rubin stated that he did not see

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[6] *See* TEX. PENAL CODE ANN. § 25.11. The trial court admitted into evidence a copy of the indictment related to the felony offense of continuous violence against the family, which alleged that Rubin, "on or about the 6th day of December, 2016[,] . . . did then and there intentionally, knowingly, or recklessly cause bodily injury to [the complainant], a member of [Rubin's] family or [a] member of [Rubin's] household or [a] person with whom [Rubin] has or has had a dating relationship, by biting [the complainant] with [his] mouth, and on or about the 16th day of December, 2016, [Rubin] did then and there intentionally, knowingly, or recklessly cause bodily injury to [the complainant], a member of [Rubin's] family or [a] member of [Rubin's] household or [a] person with whom [Rubin] has or has had a dating relationship, by grabbing, pushing, pulling, or striking [the complainant] with his hand, and said conduct by [Rubin] occurred during a period that was 12 months or less in duration." *See id.*

[7] In contrast, at another point in his testimony, Rubin stated that appellant did block the complainant from exiting the apartment.

appellant block the door to the apartment and also that appellant complied with Officer Barletta's initial request to step outside and exit the apartment.

Rubin further stated that he had drunk one beer and "a sip o[f] [a] second one" on December 16, 2016, but he had not used narcotics or prescription medication that night. He admitted that he could be misremembering the events of the night based on "being tased."

About the apartment, Rubin testified that he had lived in the apartment for about three months, but he stopped living at the apartment about a month or a month and a half before December 16, 2016. In other words, he had stopped living at the apartment "some weeks" before December 16, 2016 because the complainant had been cheating on him. Rubin stated that he had packed up his "stuff" and moved into appellant's home or a friend's home. According to Rubin, the complainant asked him not to come back to the apartment. And on December 15, 2016, he and two of his friends had tried to get into the apartment.

Despite the above, Rubin also stated that he believed that on December 16, 2016, he was still listed on the lease agreement for the apartment and he did not intend to abandon his rights to the apartment when he left. That said, he also believed that the complainant had the right to tell him that he could not return to the apartment, and the complainant had told him that she had removed him from the lease agreement. Rubin, however, had seen no documentation showing that he had

been removed from the lease agreement. Rubin testified that he gave appellant permission to be at the apartment on December 16, 2016, and appellant knew that his name was on the lease agreement for the apartment. On December 16, 2016, Rubin did not attempt to move back into the apartment.

The trial court admitted into evidence a copy of the Apartment Lease Contract dated September 23, 2016 and signed by the complainant and Rubin, as parties to the lease agreement. Copies of other documents related to the rental of the apartment that were admitted into evidence list both the complainant and Rubin as residents of the apartment, while others list the complainant as the "applicant" and Rubin as her spouse. Copies of money orders admitted into evidence show that the complainant paid a deposit for the apartment as well as an application and administration fee. Copies of documents related to the renewal of the lease agreement for the apartment, also admitted into evidence, are dated September 23, 2017 and list the complainant as the only resident of the apartment.

The trial court admitted into evidence an audio recording of Rubin's December 16, 2016 telephone call for emergency assistance. Rubin made the call while he was at the complainant's apartment with appellant. During the telephone call, Rubin requested the help of law enforcement officers at the apartment. He stated that he was "having problems" with the complainant and her friend who were "staying" at the apartment. Rubin reported that the complainant had told him that

he was no longer on the lease agreement for the apartment and she had paperwork reflecting such. But Rubin believed that he was still on the lease agreement. Rubin conveyed on the telephone call that he had been staying with appellant and not at the apartment. And he stated that the complainant was "trying to kick [him] out," he had "been out of [his] house for a while," and he had let the complainant "live [there] by herself for a little bit."

Rubin also stated on the telephone call that he had drunk "a couple drinks" and that appellant was with him at the apartment along with the complainant. According to Rubin, the complainant told appellant that Rubin did not have the right to be at the apartment and that the complainant had "been paying [for] all the things." When Rubin arrived at the apartment on December 16, 2016, the door was locked.

Finally, the trial court admitted into evidence an audio recording of a telephone call made by Rubin to appellant while Rubin was in the Denton County Jail. During the telephone call, appellant stated that she and Rubin did not use a key to enter the apartment on December 16, 2016; they knocked on the door. She also told Rubin to say that they did not enter the apartment without asking. And according to appellant, while inside the apartment, Rubin went to get his "personal stuff" while she sat in the dining room.

Appellant also stated, during the telephone call, that she did not obstruct a law enforcement officer on December 16, 2016; she "went outside" and "was in the

hallway." And she did not hold the complainant against her will. Appellant then asked Rubin, "You got it?" When appellant stated for another time that she did not hold the complainant against her will, Rubin responded, "You did, mom," and appellant stated, "I know, I'm telling you what you are going to say." Appellant also told Rubin to say that she "did not get in the way" and "she went outside to the hallway." Rubin then stated, "I got it."

Criminal Trespass

In her sole issue, appellant argues that the evidence is legally insufficient to support her conviction for the offense of criminal trespass because "[a]ppellant had effective consent from Rubin to be on the apartment premises" and Rubin asked appellant "to go to the apartment with him as a witness."

We review the legal sufficiency of the evidence by considering all of the evidence in the light most favorable to the jury's verdict to determine whether any "rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *Jackson v. Virginia*, 443 U.S. 307, 318–19 (1979); *Williams v. State*, 235 S.W.3d 742, 750 (Tex. Crim. App. 2007). Our role is that of a due process safeguard, ensuring only the rationality of the trier of fact's finding of the essential elements of the offense beyond a reasonable doubt. *See Moreno v. State*, 755 S.W.2d 866, 867 (Tex. Crim. App. 1988). We defer to the responsibility of the fact finder to fairly resolve conflicts in testimony, weigh evidence, and draw reasonable

inferences from the facts. *Williams*, 235 S.W.3d at 750. That said, our duty requires us to "ensure that the evidence presented actually supports a conclusion that the defendant committed" the criminal offense of which she is accused. *Id.*

In reviewing the legal sufficiency of the evidence, we treat direct and circumstantial evidence equally because circumstantial evidence is just as probative as direct evidence in establishing the guilt of a defendant. *Clayton v. State*, 235 S.W.3d 772, 778 (Tex. Crim. App. 2007); *see also Wise v. State*, 364 S.W.3d 900, 903 (Tex. Crim. App. 2012) (evidence-sufficiency standard of review same for both direct and circumstantial evidence). Circumstantial evidence alone can be sufficient to establish guilt. *Clayton*, 235 S.W.3d at 778; *Hooper v. State*, 214 S.W.3d 9, 13 (Tex. Crim. App. 2007). For evidence to be sufficient, the State need not disprove all reasonable alternative hypotheses that are inconsistent with a defendant's guilt. *See Wise*, 364 S.W.3d at 903; *Cantu v. State*, 395 S.W.3d 202, 207–08 (Tex. App.—Houston [1st Dist.] 2012, pet. ref'd). Rather, a court considers only whether the inferences necessary to establish guilt are reasonable based on the cumulative force of all the evidence when considered in the light most favorable to the jury's verdict. *Wise*, 364 S.W.3d at 903; *Hooper*, 214 S.W.3d at 13. The jury, as the judge of the facts and credibility of the witnesses, could choose to believe or not to believe the witnesses, or any portion of their testimony. *Sharp v. State*, 707 S.W.2d 611, 614

(Tex. Crim. App. 1986); *Jenkins v. State*, 870 S.W.2d 626, 628 (Tex. App.—Houston [1st Dist.] 1994, pet. ref'd).

A person commits the offense of criminal trespass if she intentionally or knowingly "remains . . . in property of another . . . without effective consent" when she received notice to depart but failed to do so.[8] *See* TEX. PENAL CODE ANN. §§ 6.02, 30.05(a)(2); *Day v. State*, 532 S.W.2d 302, 306 (Tex. Crim. App. 1975), *disapproved of on other grounds by Hall v. State*, 225 S.W.3d 524, 527–31 (Tex. Crim. App. 2007); *see also Elbeyallen v. State*, Nos. 02-17-00148-CR, 02-17-00149-CR, 2018 WL 2054465, at *5 (Tex. App.—Fort Worth May 3, 2018, pet. ref'd) (mem. op., not designated for publication). "Effective consent" includes "consent by a person legally authorized to act for the owner." TEX. PENAL CODE ANN. § 1.07(a)(19) (internal quotations omitted). Consent is not effective if it is

[8] Although a person could commit the offense of criminal trespass if she recklessly "remain[ed] . . . in property of another . . . without effective consent" when she received notice to depart but failed to do so, the information in this case did not allege that appellant acted recklessly. *See West v. State*, 567 S.W.2d 515, 516 (Tex. Crim. App. 1978); *see also* TEX. PENAL CODE ANN. §§ 6.02, 30.05(a)(2). Further, to the extent that appellant in her brief asserts that the information in this case does not allege that appellant committed the offense of criminal trespass by intentionally or knowingly remaining in property of another without effective consent when she received notice to depart but failed to do so, we note that the amended information in this case alleges that appellant, "on or about the 16th day of December, 2016, and before the making and filing of this Information, in the County of Denton of the State of Texas, did then and there intentionally or knowingly remain in a habitation of another, namely, [the complainant], without the effective consent of the [complainant], and [appellant] had received notice to depart but failed to do so." *See* TEX. PENAL CODE ANN. §§ 6.02, 30.05(a)(2); *see also* TEX. CODE CRIM. PROC. ANN. art. 28.10(a) ("Amendment of indictment or information").

"given by a person the actor knows is not legally authorized to act for the owner" or "given by a person who by reason of . . . intoxication is known by the actor to be unable to make reasonable decisions." *Id.* § 1.07(a)(19)(B), (C). "Owner" is "a person who . . . has title to the property, possession of the property, whether lawful or not, or a greater right to possession of the property than the actor." *Id.* § 1.07(a)(35) (internal quotations omitted); *see also Mack v. State*, 928 S.W.2d 219, 222 (Tex. App.—Austin 1996, pet. ref'd). And "[p]ossession" is defined as the "actual care, custody, control, or management" of the property. TEX. PENAL CODE ANN. § 1.07(a)(39) (internal quotations omitted); *see also Mack*, 928 S.W.2d at 222.

Appellant argues that she could not have committed the offense of criminal trespass because she "had effective consent from Rubin to be on the apartment premises," and so, she relied on "one owner's consent to enter and remain on the property."

The complainant testified that on December 16, 2016, Rubin did not live at the complainant's apartment. Rather, he had moved out of the apartment about a week before December 16, 2016. According to the complainant, Rubin had assaulted her on December 6, 2016 and again on December 9, 2016, and after the December 9, 2016 assault, the complainant told Rubin that he needed to move out of her apartment. Rubin then moved all of his belongings and clothing out of the apartment, and he began living with appellant. The complainant also testified that

before December 16, 2016, she had removed Rubin from the lease agreement for the apartment. And she stated that on December 15, 2016, Rubin tried to break into her apartment. According to the complainant Rubin was not allowed in her apartment on either December 15, 2016 or December 16, 2016, and she "pa[id] the bills" and for "everything" related to the apartment. Rubin did not "pay the bills."

While viewing photographs of her apartment that the trial court admitted into evidence at trial, the complainant pointed out her clothing, which she stated was present in the apartment on December 16, 2016. The complainant also noted that only her toothbrush appeared in the photograph of the apartment's bathroom because Rubin was no longer living at the apartment.

Rubin testified that he had lived at the apartment for about three months, but he had stopped living at the apartment about a month or a month and a half before December 16, 2016. In other words, Rubin had stopped living at the apartment "some weeks" before December 16, 2016, and he had packed up his "stuff" and moved into appellant's home or a friend's home. Rubin testified that he believed that the complainant had the right to tell him that he could not return to the apartment and the complainant had asked him not to come back to the apartment. Rubin acknowledged that the complainant had told him that she had removed him from the lease agreement and he had tried to get into the apartment on December 15, 2016. Rubin did not attempt to move back into the apartment on December 16, 2016.

The trial court admitted into evidence an audio recording of Rubin's telephone call on December 16, 2016 for emergency assistance. During the call, Rubin stated that the complainant and her friend were "staying" at the apartment. Rubin further stated that the complainant had told him that he was no longer on the lease agreement for the apartment and that she had paperwork reflecting such. Rubin also acknowledged that he had been staying with appellant, he had been "out of" the apartment "for a while," and he had let the complainant "live [at the apartment] by herself for a little bit." When Rubin arrived at the apartment on December 16, 2016, the door to the apartment was locked. According to Rubin, the complainant told appellant that Rubin did not have the right to be at the apartment and that the complainant had "been paying [for] all the things."

The trial court also admitted into evidence an audio recording of a telephone call made by Rubin to appellant while Rubin was in the Denton County Jail. During the telephone call, appellant stated that she and Rubin did not use a key to enter the apartment on December 16, 2016; they had knocked on the door.

Finally, copies of documents related to the rental of the apartment, which the trial court admitted into evidence, list the complainant as the "applicant" for the apartment and Rubin as her spouse. And copies of money orders admitted into evidence show that the complainant paid a deposit for the apartment as well as an application and administration fee. Copies of documents related to the renewal of

the lease agreement for the apartment, also admitted into evidence, are dated September 23, 2017 and list the complainant as the only resident of the apartment.

The record shows that when appellant committed the offense of criminal trespass on December 16, 2016, Rubin had moved out of the apartment, removed all of his belongings, and was living with appellant. Rubin was no longer allowed at the apartment and had tried to break into the complainant's apartment the night before. *Cf. Dominguez v. State*, 355 S.W.3d 918, 923 (Tex. App.—Fort Worth 2011, pet. ref'd) (jury could have reasonably concluded defendant not owner of house where he moved out of girlfriend's home a week before offense and broke into house to gain access); *Leaks v. State*, No. 13-03-613-CR, 2005 WL 704409, at *2–4 (Tex. App.—Corpus Christi–Edinburg Mar. 24, 2005, pet. ref'd) (evidence sufficient to support jury's finding defendant entered apartment without owner's effective consent where defendant had moved out of apartment and did not have key); *Mack*, 928 S.W.2d at 222–23 (defendant not considered owner where he moved out of apartment, removed his belongings, began living with parents, and stopped paying rent or utilities for apartment); *Davis v. State*, 799 S.W.2d 398, 399–400 (Tex. App.—El Paso 1990, pet. ref'd) (evidence sufficient to support criminal trespass conviction even though defendant married to complainant); *Hudson v. State*, 799 S.W.2d 314, 315–16 (Tex. App.—Houston [14th Dist.] 1990, pet. ref'd) (defendant not considered owner of apartment where complainant, after defendant had assaulted

her, took back key to apartment and removed all of defendant's clothing from apartment).

Although Rubin testified that he believed that he was still on the lease agreement on December 16, 2016 and the trial court admitted into evidence a copy of the Apartment Lease Contract, dated September 23, 2016 and signed by the complainant and Rubin, the complainant testified that she had removed Rubin from the lease agreement before December 16, 2016—the date of the offense. The jury, as the trier of fact, is the exclusive judge of the credibility of witnesses and of the weight to be given their testimony, and reconciliation of conflicts in the evidence is within the exclusive province of the jury. *Wyatt v. State*, 23 S.W.3d 18, 30 (Tex. Crim. App. 2000). The jury may choose to believe some testimony and disbelieve other testimony. *Wyatt*, 23 S.W.3d at 30; *Davis v. State*, 177 S.W.3d 355, 358 (Tex. App.—Houston [1st Dist.] 2005, no pet.). And when there is a conflict in the evidence, we presume that the jury, as the trier of fact, resolved the conflict in favor of the judgment. *See Merritt v. State*, 368 S.W.3d 516, 525–26 (Tex. Crim. App. 2012); *see also Tatro v. State*, 580 S.W.3d 740, 744 (Tex. App.—Houston [14th Dist.] 2019, no pet.). Ultimately, we defer to the jury to resolve conflicts in the evidence, weigh the evidence, and draw reasonable inferences from it. *Hooper*, 214 S.W.3d at 13.

Based on the above evidence, the jury could have reasonably concluded that Rubin was not an "[o]wner" of the apartment, as asserted by appellant, and that Rubin could not have provided the necessary "[e]ffective consent" for appellant to remain in the apartment. *See* TEX. PENAL CODE ANN. §§ 1.07(a)(19) ("Effective consent" includes "consent by a person legally authorized to act for the owner." (internal quotations omitted)), 1.07(a)(35) ("Owner" is "a person who . . . has title to the property, possession of the property, whether lawful or not, or a greater right to possession of the property than the actor." (internal quotations omitted)), 1.07(a)(39) ("Possession" means "actual care, custody, control, or management [of the property]." (internal quotations omitted)); *see also Frazier v. State*, No. 05-10-00090-CR, 2010 WL 2978494, at *3 (Tex. App.—Dallas July 30, 2010) (mem. op., not designated for publication) (appellant court appropriately deferred to fact finder's resolution of whether defendant or complainant owned house), *aff'd*, No. PD-1111-10, 2011 WL 1631689 (Tex. Crim. App. Apr. 20, 2011) (not designated for publication).

Thus, viewing the evidence in the light most favorable to the jury's verdict, we conclude that the jury could have reasonably found that appellant intentionally or knowingly remained in the complainant's apartment without the effective consent of the complainant when appellant received notice to depart but failed to do so. *See*

TEX. PENAL CODE ANN. § 30.05(a)(2). We hold that the evidence is legally sufficient to support appellant's conviction for the offense of criminal trespass.

We overrule appellant's sole issue.[9]

Interference with Public Duties and Unlawful Restraint

As already noted, related to appellant's convictions for the offenses of interference with public duties[10] and unlawful restraint,[11] appellant's appointed counsel on appeal has moved to withdraw and filed a brief stating that the record in each case presents no reversible error and appellant's appeals lack merit and are frivolous.[12] *See Anders v. California*, 386 U.S. 738 (1967).

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9 In a single paragraph in appellant's brief, she states that "[t]he jury charge [was] in error" because it "charg[ed] a portion of the criminal offense that was not alleged in the complaint." This assertion does not take into consideration the amended information filed in this case. *See* TEX. CODE CRIM. PROC. ANN. art. 28.10(a) ("Amendment of indictment or information"). And to the extent that appellant attempts to raise jury-charge error as a separate issue on appeal, we hold that her argument is inadequately briefed. *See* TEX. R. APP. P. 38.1; *McCarthy v. State*, 65 S.W.3d 47, 49 n.2 (Tex. Crim. App. 2001) (inadequately briefed issue presents nothing for review).

10 *See* TEX. PENAL CODE ANN. § 38.15(a)(1), (b).

11 *See id.* § 20.02(a), (c).

12 Appellant's originally-appointed counsel died after filing an *Anders* brief in appellate cause numbers 01-18-00617-CR and 01-18-00619-CR. The trial court appointed new counsel to represent appellant on appeal. Appellant's newly-appointed counsel filed correspondence with the Court, indicating that he adopted the previously filed *Anders* brief and agreed that the record in each case presented no reversible error and appellant's appeals were without merit and were frivolous. Newly-appointed counsel also filed motions to withdraw. *See Anders*, 386 U.S. at 744; *cf. Parker v. State*, Nos. 02-16-00164-CR to 02-16-00168-CR, 2016 WL 7473934, at *1 n.2 (Tex. App.—Fort Worth Dec. 29, 2016, no pet.) (mem. op., not designated for publication) (noting defendant's originally-appointed

Counsel's brief meets the *Anders* requirements by presenting a professional evaluation of the record in each case and supplying the Court with references to the record and legal authority. *Id.* at 744; *see also High v. State*, 573 S.W.2d 807, 812 (Tex. Crim. App. 1978). Counsel indicates that he has thoroughly reviewed the record in each case and is unable to advance any grounds of error that warrant reversal. *See Anders*, 386 U.S. at 744; *Mitchell v. State*, 193 S.W.3d 153, 155 (Tex. App.—Houston [1st Dist.] 2006, no pet.).

Counsel has informed the Court that he provided appellant with a copy of the brief and the motions to withdraw, informed her of her right to examine the appellate records and file a response to counsel's *Anders* brief, and provided her with a form motion to access the appellate records.[13] *See Kelly v. State*, 436 S.W.3d 313, 319–20 (Tex. Crim. App. 2014); *In re Schulman*, 252 S.W.3d 403, 408 (Tex. Crim. App. 2008). Appellant has not filed a response to her counsel's *Anders* brief.

We have independently reviewed the complete records in appellate cause numbers 01-18-00617-CR and 01-18-00619-CR, and we conclude that no reversible

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counsel died after filing *Anders* brief and new appellate counsel subsequently appointed).

[13] This Court also notified appellant that her counsel had filed an *Anders* brief and motions to withdraw and informed appellant that she had a right to examine the appellate record in each case and file a response to her counsel's *Anders* brief. And this Court provided appellant with a form motion to access the appellate records. *See Kelly v. State*, 436 S.W.3d 313, 319–22 (Tex. Crim. App. 2014); *In re Schulman*, 252 S.W.3d 403, 408 (Tex. Crim. App. 2008).

error exists in the record in either case, there are no arguable grounds for review, and the appeals are frivolous. *See Anders*, 386 U.S. at 744 (emphasizing reviewing court—and not counsel—determines, after full examination of proceedings, whether appeal is wholly frivolous); *Garner v. State*, 300 S.W.3d 763, 767 (Tex. Crim. App. 2009) (reviewing court must determine whether arguable grounds for review exist); *Bledsoe v. State*, 178 S.W.3d 824, 826–27 (Tex. Crim. App. 2005) (same); *Mitchell*, 193 S.W.3d at 155 (reviewing court determines whether arguable grounds exist by reviewing entire record). We note that appellant may challenge a holding that there are no arguable grounds for an appeal in either case by filing a petition for discretionary review in the Texas Court of Criminal Appeals. *See Bledsoe*, 178 S.W.3d at 827 & n.6.

Conclusion

We affirm the judgments of the trial court. We grant appellant's appointed counsel's motions to withdraw filed in appellate cause numbers 01-18-00617-CR and 01-18-00619-CR.[14] Attorney J. Edward Niehaus must immediately send appellant the required notice and file a copy of the notice with the Clerk of this Court. *See* TEX. R. APP. P. 6.5(c). We dismiss any pending motions as moot.

Julie Countiss
Justice

Panel consists of Justices Keyes, Goodman, and Countiss.

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

[14] Appointed counsel still has a duty to inform appellant of the result of these appeals and that she may, on her own, pursue discretionary review in the Texas Court of Criminal Appeals. *See Ex parte Wilson*, 956 S.W.2d 25, 27 (Tex. Crim. App. 1997).