STATE OF LOUISIANA

VERSUS

MISHANDA L REED

NO. 24-KA-329

FIFTH CIRCUIT

COURT OF APPEAL

STATE OF LOUISIANA

ON APPEAL FROM THE TWENTY-FOURTH JUDICIAL DISTRICT COURT
PARISH OF JEFFERSON, STATE OF LOUISIANA
NO. 21-5868, DIVISION "M"
HONORABLE SHAYNA BEEVERS MORVANT, JUDGE PRESIDING

April 02, 2025

MARC E. JOHNSON
JUDGE

Panel composed of Judges Marc E. Johnson,
John J. Molaison, Jr., and Timothy S. Marcel

CONVICTION AFFIRMED;
SENTENCE VACATED;
REMANDED

MEJ
JJM
TSM

COUNSEL FOR DEFENDANT/APPELLANT,
MISHANDA L. REED

Ralph S. Whalen, Jr.

COUNSEL FOR PLAINTIFF/APPELLEE,
STATE OF LOUISIANA

Honorable Paul D. Connick, Jr.
Thomas J. Butler
Juliet L. Clark

JOHNSON, J.

Defendant, Mishanda L. Reed, seeks review of her conviction of attempted second degree kidnapping, in violation of La. R.S. 14:41.1(27), and sentence of eleven years imprisonment at hard labor. For the reasons that follow, we affirm Defendant's conviction, vacate her sentence, and remand the matter for further proceedings consistent with this opinion.

FACTS AND PROCEDURAL HISTORY

This is Defendant's second appeal. Previously, the Court remanded the matter to allow the district court to rule on Defendant's outstanding motion to arrest judgment. *State v. Reed*, 24-120 (La. App. 5 Cir. 4/23/24), 386 So.3d 1196, 1197. The facts of this case, also discussed in detail in her co-defendant's appeal, *State v. Malcom Reed*, 24-59 (La. App. 5 Cir. 12/30/24), -- So.3d --, 2024 WL 5244752, are summarized below.

On June 27, 2021, Avery Cooper drove from Houston to meet Defendant in New Orleans. Mr. Cooper and Defendant met in college in the 1990s, dated each other for a few years, and eventually lost touch with one another. They reconnected in 2020, and saw each other in an airport later that year. They also met and spent a night together in New Orleans in 2020. Mr. Cooper testified that Defendant told him that she was divorced. During his drive on June 27th, Mr. Cooper received a text message from her to meet at a hotel at 1200 Canal Street. He called Defendant when he arrived at the hotel. Defendant then requested that he meet her at an Airbnb in Kenner, Louisiana instead.

At trial, Mr. Cooper recalled having trouble finding the Airbnb. Defendant provided directions while they were on the phone and met him outside the Airbnb, wearing a yellow dress. She then went to retrieve her purse from inside the Airbnb. Mr. Cooper followed her inside to use the restroom. Defendant informed Mr. Cooper that there were treats on the second floor loft. Mr. Cooper believed the

treats would be THC gummies. He went up the stairs, noticed her purse, and called out to Defendant. At that moment, he recalled seeing a man, later identified as co-defendant Malcom Reed, Defendant's husband, enter through the front door with a gun and an aluminum baseball bat. Mr. Cooper believed the man, who appeared angry and upset, was there to rob them. He yelled from the top of the stairs for Defendant to call the police. She did not respond.

The man made eye contact with Mr. Cooper, and said "Get your f**king a** down here." Mr. Cooper recalled repeatedly screaming for Defendant but did not see her. As Mr. Cooper reached for his phone, the man pointed his gun at Mr. Cooper, and threatened to shoot him if he pulled out his phone. Mr. Cooper recounted that he jumped over the stair railing hoping to jump to the first floor. The man then gestured towards him, and told him to pull himself back over to the other side. He complied, and scraped his shin in the process. The man then instructed Mr. Cooper to get on his knees.

Believing they were being robbed and that the man had the wrong place, Mr. Cooper told him that they were not the people he was looking for. The man moved up the stairs to Mr. Cooper, and replied, "Oh, I got the right f**king person." Mr. Cooper testified that he then lunged at the man. The man retaliated by hitting Mr. Cooper's leg with the bat. Mr. Cooper fell, and they wrestled over the gun in the man's possession. The scuffle ended when the man pointed the gun at him. Mr. Cooper told the man that Defendant was getting help and the police would arrive soon. The man shouted, "Get your a** up here."

Defendant soon appeared upstairs. Mr. Cooper recalled looking at her in confusion and the man saying to him, "That's right. You figured it out." Mr. Cooper asked her if she had set him up. The man told Mr. Cooper not to talk to Defendant, hit him again with the bat, and instructed Defendant to go downstairs to

retrieve his bag. After she returned with the bag, the man, who was still holding the gun and bat, told her to get out the zip ties.

Defendant used the zip ties to bind Mr. Cooper's wrists and legs per the man's instructions. Once his hands were secured in zip ties, Mr. Cooper testified that the man placed the bat on the bed and put the gun away. The man told Defendant to search Mr. Cooper's pockets and she removed Mr. Cooper's mobile phone, keys and wallet from his pants pockets. She handed the phone to the intruder. Mr. Cooper recalled realizing at this point that the man was Defendant's husband, Mr. Reed. He told Mr. Reed that Defendant told him she was divorced, to which Mr. Reed responded by picking up the bat and said, "Don't f**king say that."

Using the password Mr. Cooper provided, Mr. Reed unlocked and began scrolling through the phone. Mr. Reed advised Mr. Cooper that they were going to play a question and answer game and that he would hit him with the bat every time he lied. He told Mr. Cooper, "you're a dead man" if the phone contained evidence that Mr. Cooper and Defendant were having a sexual relationship. Defendant informed her husband there was nothing, and he replied that he did not know and he had to go through Mr. Cooper's phone since she had erased all of the messages on her phone.

When Mr. Reed was not satisfied with answers to questions, he struck Mr. Cooper in the face and on the head with the gun. One blow chipped Mr. Cooper's tooth. At various points of the "game", Mr. Reed asked Defendant for the time.

Mr. Cooper recalled asking Defendant why she had set him up. He urged her to tell her husband that she told him she was divorced. In response, Mr. Reed hit Mr. Cooper and instructed him not speak to Defendant. Mr. Cooper testified that throughout this time, which he described as several hours, Defendant went up and down the stairs multiple times. At some point, after Defendant announced what

time it was, Mr. Reed, standing over Mr. Cooper holding the bat and his mobile phone, ordered her to retrieve Clorox and towels from downstairs to clean up bloodstains around Mr. Cooper. Once she finished, Mr. Reed told her to put the soiled towels in the washing machine.

Then, Mr. Reed made a plan for leaving the Airbnb. Defendant would get Mr. Reed's car from around the corner and follow him in Mr. Cooper's car. Mr. Cooper recalled that Defendant walked out with keys in her hand. She returned inside shortly afterwards and advised they needed to be careful because people were outside. Defendant then went back downstairs to retrieve her husband's car. While Mr. Cooper and Mr. Reed were alone in the Airbnb, Mr. Reed took out a knife and made several cuts underneath Mr. Cooper's eye, "like the African tribes". Although he did not see Defendant, Mr. Cooper knew she was still in the residence because he heard her scream, "That's enough." Mr. Reed then stopped.

Mr. Reed cut the restraints from Mr. Cooper's legs, and placed them in a bag, and said they needed to leave. Mr. Cooper explained to him that he was unable to get up due to numbness in his legs and hands. Mr. Reed told him that he was going to get up and proceeded to lift Mr. Cooper by the armpits. He led Mr. Cooper down the stairs and then outside. Defendant waited in the driver seat of a black sedan next to Mr. Cooper's car. Defendant informed Mr. Cooper of the plan to leave. They would be in Mr. Cooper's car with Defendant following in Mr. Reed's car.

Mr. Reed put Mr. Cooper in the front passenger seat of his own car. On the stand, Mr. Cooper described himself as a "captive". After speaking with Defendant, Mr. Reed returned to Mr. Cooper's car, placed a bag in the backseat, started the car, and drove off. Mr. Cooper recalled thinking they would "dump [him] somewhere." After driving for a distance, Mr. Reed pulled over, turned on the hazard lights, and placed a phone call to Defendant to ask her location. She

reported that she was pulling up behind them. Mr. Reed removed Mr. Cooper from his vehicle and placed him in the back seat of the car Defendant was driving. He instructed Defendant to put her phone on speaker and instructed they were not to speak to one another. Defendant then returned to Mr. Cooper's car. While alone with Defendant, Mr. Cooper asked her for help. She shook her head no.

From the backseat of Mr. Reed's car, Mr. Cooper recalled observing him rummaging through his car and wiping down the steering wheel. Mr. Cooper then watched as Mr. Reed exited the other car with his mobile phone, removed its SIM card, and smashed the phone with a hammer. Mr. Cooper recalled Mr. Reed got into the back seat of the car with the bag next to him, closed the car door, and instructed Defendant to drive away. Mr. Reed told Mr. Cooper, "You better consider yourself f**king lucky that I can control my temper." When the vehicle stopped, Mr. Reed ordered Mr. Cooper out of the car and onto his knees. After initially protesting, Mr. Cooper complied. Defendant then used a knife to remove the zip ties binding Mr. Cooper's hands, cutting his wrists in the process.

Mr. Cooper testified that after the zip ties were removed, Mr. Reed instructed Defendant to prepare to drive. Mr. Reed then pushed Mr. Cooper over onto the road. Defendant re-entered the car, and Defendant drove the two away. Mr. Cooper recalled there was little traffic on the road and he had no way to call for help. Eventually, a truck stopped and the driver called the police.

The police and an ambulance eventually arrived. Mr. Cooper described being in severe pain and disbelief. He was taken to a hospital, where he received treatment for a concussion, a potential broken left arm, right leg swelling, and internal bleeding; he required a blood transfusion. Mr. Reed stayed in the ICU for four days. Mr. Cooper testified that he requested anonymity from hospital administrators because he feared the perpetrators might return. On cross-examination at trial, Mr. Cooper acknowledged that pre-existing health conditions

may have contributed to the length of his stay in ICU. He testified that he still has a chipped tooth, a major scar on his leg, and visible scars on his wrists and cheeks from the incident.

Kenner Police Department Officer Billy Hingle testified that he responded to a call on June 27, 2021 about a man who may have been beaten asking for help in the 300 block of Alliance Street. Upon arrival, he recalled being flagged down and directed to Mr. Cooper on the side of the road. He observed wounds on Mr. Cooper's front leg, with visible tissue and blood, as well as marks on his knees. Mr. Cooper was lying on his back and appeared disoriented and unsure of what had occurred. Officer Hingle recalled Mr. Cooper could not provide clear information about the incident. When EMS lifted Mr. Cooper from the ground, Officer Hingle discovered Defendant's business card stained with a red, blood-like substance.

At the hospital, police presented Mr. Cooper with photographs. He identified Defendant and her husband in the lineups as the individuals who inflicted his wounds. He also identified Mr. Reed as the individual who hit him with the baseball bat. During his hospital stay, Mr. Cooper gave a recorded statement to police in which he reported being beaten with a hammer. At trial, Mr. Cooper acknowledged the recorded statement but testified that Mr. Reed only used the hammer to smash his phone. During his search of the Airbnb, Officer Hingle recalled smelling bleach and observing that the floor appeared recently mopped. He saw a red blood-like substance on the stair rails and similar splatters upstairs by the bed. Photographs were taken, and evidence was collected, including pillowcases and blankets from the washing machine. Swabs were collected from red, blood-like stains on the railing, near the bed, and other surfaces

After being released from the hospital on July 1, 2021, Mr. Cooper learned that his vehicle had been recovered with the keys and wallet found inside. He also gave a second recorded statement to police. In his trial testimony, Mr. Cooper

addressed the inconsistencies in his statements given to police and the emergency responders. He explained that the experience was traumatic -- he did not remember every moment of it but had no intention to mislead police in any way. DNA analysis results strongly indicated that Mr. Cooper was a contributor to the DNA obtained from Defendant's business card and from the blood on the railing of the bed inside the Airbnb. There was only moderate support that the blood evidence contained the DNA of Mr. Reed, while Defendant was excluded entirely.

A condensed version of the surveillance video from a business, located at 322 Hollandey Street, was created, and admitted into evidence. As the jury viewed the video, Kenner Police Department Sergeant Arthur Coll identified Mr. Reed standing aside a Toyota Camry. He confirmed the location depicted as the Airbnb at 1314 Lloyd Price, which had been rented by Defendant at the time of recording. The time of 5:13 p.m. was displayed when the video recording began. At 6:30 p.m., the recording captured the arrival of Mr. Cooper's Ford Fiesta and Defendant wearing a yellow dress. Mr. Reed's car, driven by Defendant, appeared in the video at 7:35 p.m. At 8:35 p.m., approximately two hours after Mr. Cooper arrived, Mr. Reed was seen getting into Mr. Cooper's car and Defendant was seen exiting their vehicle. Afterwards, the video recording captured Mr. Reed and Mr. Cooper leaving the Airbnb in Mr. Cooper's vehicle. Approximately eight minutes later, Defendant drove away in the other vehicle. He confirmed the video timestamps of Mr. Cooper's arrival at 6:37 p.m. and departure at 8:47 p.m.

The Jefferson Parish District Attorney filed a bill of information charging Defendant with two counts of aggravated battery with a knife, in violation of La. R.S. 14:34 (counts one and three), and with armed robbery with a firearm, in violation of La. R.S. 14:64, specifically utilizing the La. R.S. 14:64.3(A) sentencing provision (count two). A subsequent bill of information was filed, charging Defendant with second degree kidnapping, in violation of La. R.S.

14:44.1 (count one), with armed robbery with a firearm, in violation of La. R.S. 14:64, utilizing the La. R.S. 14:64.3(A) sentencing provision (count two), and with aggravated battery with a "gun and/or baseball bat", in violation of La. R.S. 14:34. Defendant pled not guilty at her arraignment. Just before trial, the State amended the bill of information to reflect that count two was *nolle prossed* against both defendants.

A few days before trial, Defendant filed a Motion for Special Jury Instructions regarding an instruction for compulsion. The State filed a response the following day. That same day, the district court took up the matter, then Mr. Reed's motion for severance, and denied both motions.

On September 26, 2023, trial commenced before a twelve-person jury for Defendant and Mr. Reed. On September 28, 2023, the district court again denied the motion for special jury instructions. That same day, the jury found Defendant guilty of attempted second degree kidnapping as to count one and not guilty as to count three.

The court held a sentencing hearing on October 13, 2023. At the end of the hearing, Mr. Reed, who was convicted of second degree kidnapping, was sentenced to 13 years imprisonment, with the first two years to be served without benefits[1]. The court set another hearing a week later to take up Defendant's sentencing, Motion for New Trial and Motion to Arrest Judgment.

At the October 23, 2023 hearing on Defendant's Motion for New Trial, Defendant testified, along with her father and her best friend. Both Mr. Reed and Mr. Cooper testified at the hearing regarding Defendant's fear of Mr. Reed, her willingness to testify at trial, and her former counsel's performance. Defendant

[1] Mr. Reed was also convicted of simple battery and sentenced to six months in Jefferson Parish Correctional Center, to be served concurrently with the sentence for count one. *State v. Reed*, 24-59 (La. App. 5 Cir. 12/30/24), 2024 WL 5244752 at *1.

also testified about what happened the evening of the June 2021 incident. At the end of hearing, the court stated for the record that it was aware of plea negotiations taking place on behalf of Defendant and advising all parties of a deadline, which was missed. The court also recalled reviewing with Defendant her right to testify, and that it was her decision alone, "especially in light of the fact that [her previous counsel] was requesting a compulsion defense and [the co-defendant] has re-urged his Motion to Sever" in response. The court declared that it did not find the testimony of any of the witnesses credible and denied the motion for new trial. After Defendant waived delays, the court sentenced Defendant to eleven years imprisonment at hard labor. The district court denied Defendant's subsequent Motion to Reconsider Sentence, but granted her timely Notice of Appeal.

In April 2024, this Court found that the trial court inadvertently sentenced Defendant without having resolved her outstanding motion in arrest of judgment. Therefore, this Court vacated her sentence, dismissed the appeal without prejudice, and remanded for a ruling on the outstanding motion in arrest of judgment and for subsequent resentencing if necessary. *See Reed*, 386 So.3d at 1197.

On May 16, 2024, on remand, the trial court denied the Motion in Arrest of Judgment. Defendant was then sentenced to eleven years imprisonment at hard labor. Counsel adopted the previously filed Motion to Reconsider Sentence, along with the supporting memorandum and all oral arguments. The court then adopted its prior reasoning in sentencing and permitted the parties to rely on their previous arguments and submissions regarding the Motion to Reconsider Sentence. The district court then again denied Defendant's motion, but granted her timely filed Notice of Appeal.

ASSIGNMENTS OF ERROR

1. It was error to deny Defendant's requested jury charge on compulsion.

2. It was error to deny the Motion to Sever and thus error to deny Defendant's Motion for New Trial and in Arrest of Judgment, since the court's ruling on a written motion shows prejudicial error.

3. It was error to sentence Defendant to eleven years at hard labor for attempted second degree kidnapping when her co-defendant was sentenced to thirteen years for the target offense of second degree kidnapping.

4. It was error to deny Defendant's Motion for New Trial based on insufficient evidence.

LAW AND DISCUSSION

Sufficiency of the Evidence and Denial of Motion for New Trial

Defendant contends that the State presented insufficient evidence to support her conviction and that the district court committed error when it denied her motion for new trial. She urges that the State failed to prove the elements of the crime, Mr. Cooper's testimony was inconsistent, and the jury's verdict reflected their uncertainty about the case against both her and her co-defendant. Further, the denial of severance and the exclusion of a jury instruction on compulsion compounded the prejudice against her. She argues that the district court provided inconsistent reasons for rejecting her account of events, and discredited the testimony of the witnesses of the hearing on the motion for new trial regarding her fear of her husband and his controlling nature.

The State counters that the evidence, viewed in the light most favorable to the prosecution, was constitutionally sufficient to establish that Defendant was a principal and active participant in the charged offense of second degree kidnapping. It contends that Defendant enticed the victim to the Airbnb, and actively facilitated his forcible seizure and imprisonment by Mr. Reed. Further, the victim sustained serious injuries during the ordeal.

Defendant filed motions for new trial and arrest of judgment under La. C.Cr.P. art. 859, alleging that the verdict was not responsive to the indictment or

was otherwise defective, and offered that the verdicts implied a compromise versus unanimous agreement of the jury. Defendant further argued that her conviction of attempted second degree kidnapping was illogical if Mr. Cooper was actually kidnapped, as Mr. Reed was convicted of second degree kidnapping. She also asserted that the prosecution failed to establish a motive or credible proof of her involvement in the offenses against Mr. Cooper and that introduction of evidence of her adultery was unfairly prejudicial. Regarding Defendant's first appeal, this Court vacated her sentence, dismissed the appeal without prejudice and remanded the matter for a ruling on the outstanding Motion in Arrest of Judgment and resentencing if necessary. The district court denied her motion then resentenced Defendant, finding that the jury's verdict of attempted second degree kidnapping was legally responsive under La. C.Cr.P. art. 815.

When the issues on appeal relate to both the sufficiency of the evidence and one or more trial errors, the reviewing court should first determine the sufficiency of the evidence by considering the entirety of the evidence. *State v. Hearold*, 603 So.2d 731, 734 (La. 1992). The reason for reviewing sufficiency first is that the accused may be entitled to an acquittal under *Hudson v. Louisiana,* 450 U.S. 40, 101 S.Ct. 970, 67 L.Ed.2d 30 (1981), if a rational trier of fact, viewing the evidence in accordance with *Jackson v. Virginia*, 443 U.S. 307, 99 S.Ct. 2781, 61 L.Ed.2d 560 (1979), in the light most favorable to the prosecution, could not reasonably conclude that all of the essential elements of the offense have been proved beyond a reasonable doubt. *Id.* Alternatively, the accused could be entitled to a reduction of the conviction to a judgment of guilty of a lesser and included offense. *Hearold, supra* at n.1 (citing La. C.Cr.P. art. 821; *State v. Byrd*, 385 So.2d 248 (La. 1980)). When addressing the sufficiency of the evidence, consideration must be given to the entirety of the evidence, including inadmissible evidence that was erroneously admitted, to determine whether the evidence is sufficient to

support the conviction. *Id*. at 734. *See also State v. Griffin*, 14-251 (La. App. 5 Cir. 3/11/15), 169 So.3d 473, 483. Therefore, we address Defendant's assigned error concerning the sufficiency of the evidence first.

The question of sufficiency of the evidence is properly raised in the trial court by a motion for post-verdict judgment of acquittal pursuant to La. C.Cr.P. art. 821. *State v. Williams*, 20-46 (La. App. 5 Cir. 12/30/20), 308 So.3d 791, 816, *writ denied*, 21-316 (La. 5/25/21), 316 So.3d 2. Insufficiency of the evidence is not listed as a ground for arrest of judgment in La. C.Cr.P. art. 859; the grounds listed in that article are exclusive. See *State v. Ijaz*, 427 So.2d 848, 850 (La. 1983). When a motion for a new trial is based on the verdict being contrary to the law and the evidence, such as Defendant has urged here, there is nothing to review on appeal. *See State v. Condley*, 04-1349 (La. App. 5 Cir. 5/31/05), 904 So.2d 881, 888, *writ denied*, 05-1760 (La. 2/10/06), 924 So.2d 163. However, both the Louisiana Supreme Court and this Court have addressed the constitutional issue of the sufficiency of the evidence under this circumstance. *Id*.

Thus, in reviewing the sufficiency of the evidence, an appellate court must determine if the evidence, whether direct or circumstantial, or a mixture of both, viewed in the light most favorable to the prosecution, was sufficient to convince a rational trier of fact that all of the elements of the crime have been proven beyond a reasonable doubt. *Jackson v. Virginia*, 443 U.S. at 319; *State v. Johnson*, 23-273 (La. App. 5 Cir. 2/28/24), 382 So.3d 1129, 1133. A review of the record for sufficiency of the evidence does not require the court to ask whether it believes that the evidence at the trial established guilt beyond a reasonable doubt. *Johnson*, *supra*. The directive that the evidence be viewed in the light most favorable to the prosecution requires the reviewing court to defer to the actual trier of fact's rational credibility calls, evidence weighing, and inference drawing. *State v. Aguilar*, 23-34 (La. App. 5 Cir. 11/15/23), 376 So.3d 1105, 1108. This deference to the fact-finder

does not permit a reviewing court to decide whether it believes a witness or whether the conviction is contrary to the weight of the evidence. *Id*.

Evidence may be either direct or circumstantial. Circumstantial evidence consists of proof of collateral facts and circumstances from which the existence of the main fact can be inferred according to reason and common experience. *State v. McGinnis*, 23-472 (La. App. 5 Cir. 7/31/24), 392 So.3d 963, 973. When circumstantial evidence is used to prove the commission of an offense, La. R.S. 15:438 provides that "assuming every fact to be proved that the evidence tends to prove, in order to convict, it must exclude every reasonable hypothesis of innocence." *Id*. at 974. This is not a separate test from the *Jackson* standard but rather provides a helpful basis for determining the existence of reasonable doubt. *State v. Kimble*, 22-373 (La. App. 5 Cir. 5/8/24), 389 So.3d 902, 915, *writ denied*, 24-882 (La. 12/27/24), 397 So.3d 1219. All evidence, both direct and circumstantial, must be sufficient to support the conclusion that the defendant is guilty beyond a reasonable doubt. *Id*.

Here, Defendant was charged with second degree kidnapping (count one), but was found guilty of the responsive verdict of attempted second degree kidnapping, in violation of La. R.S. 14:27 and La. R.S. 14:44.1. When a defendant does not object to a legislatively responsive verdict, the defendant's conviction will not be reversed, whether or not that verdict is supported by the evidence, as long as the evidence is sufficient to support the offense charged. *State ex rel. Elaire v. Blackburn*, 424 So.2d 246, 252 (La. 1982), *cert. denied*, 461 U.S. 959, 103 S.Ct. 2432, 77 L.Ed.2d 1318 (1983); *State v. Austin*, 04-993 (La. App. 5 Cir. 3/1/05), 900 So.2d 867, 878, *writ denied*, 05-830 (La. 11/28/05), 916 So.2d 143. In the present case, aside from the post-trial motions, the record does not reflect that defendant lodged an objection to the responsive verdicts, which included attempted second degree kidnapping.

In order to prove that Defendant was guilty of attempted second degree kidnapping, the State had to prove the elements set forth in La. R.S. 14:44.1 and La. R.S. 14:27. La. R.S. 14:27 provides in pertinent part:

> A. Any person who, having a specific intent to commit a crime, does or omits an act for the purpose of and tending directly toward the accomplishing of his object is guilty of an attempt to commit the offense intended; and it shall be immaterial whether, under the circumstances, he would have actually accomplished his purpose.
> B. (1) Mere preparation to commit a crime shall not be sufficient to constitute an attempt; but lying in wait with a dangerous weapon with the intent to commit a crime, or searching for the intended victim with a dangerous weapon with the intent to commit a crime, shall be sufficient to constitute an attempt to commit the offense intended.
>
> . . .
>
> C. An attempt is a separate but lesser grade of the intended crime; and any person may be convicted of an attempt to commit a crime, although it appears on the trial that the crime intended or attempted was actually perpetrated by such person in pursuance of such attempt.
> D. Whoever attempts to commit any crime shall be punished as follows:
>
> . . .
>
> (3) In all other cases he shall be fined or imprisoned or both, in the same manner as for the offense attempted; such fine or imprisonment shall not exceed one-half of the largest fine, or one-half of the longest term of imprisonment prescribed for the offense so attempted, or both.

The Comments under the attempt article point out that the essential elements of an attempt are "an actual specific intent to commit the offense, and an overt act directed toward that end." *See State v. Ordodi*, 06-0207 (La. 11/29/06), 946 So.2d 654, 660.

La. R.S. 14:44.1 provides, in pertinent part:

> A. Second degree kidnapping is the doing of any of the acts listed in Subsection B of this Section wherein the victim is any of the following:
> (1) Used as a shield or hostage.
>
> . . .
>
> (3) Physically injured or sexually abused. . . .
> (5) Imprisoned or kidnapped when the offender is armed with a dangerous weapon or leads the victim to reasonably believe he is armed with a dangerous weapon.
>
> . . .
>
> B. For purposes of this Section, kidnapping is any of the following:
> (1) The forcible seizing and carrying of any person from one place to another.

> (2) The enticing or persuading of any person to go from one place to another.
> (3) The imprisoning or forcible secreting of any person.
>
> . . .
>
> C. Whoever commits the crime of second degree kidnapping shall be imprisoned at hard labor for not less than five nor more than forty years. At least two years of the sentence imposed shall be without benefit of parole, probation, or suspension of sentence.

Considering La. R.S. 14:44.1 and 14:27 together, it is clear that attempted second degree kidnapping is a legally responsive verdict under La. C.Cr.P. art. 815(2) and La. R.S. 12:27(C). Further, regarding Defendant's argument that her conviction for attempted second degree kidnapping is inconsistent with her co-defendant's conviction for second degree kidnapping, we find this argument is without merit.

In *State v. Irvine*, 535 So.2d 365, 368 (La. 1988), the Louisiana Supreme Court recognized that a jury's verdicts may sometimes be the result of mistake, compromise, leniency, or nullification. The court explained that there is no injustice in punishing one guilty principal even if the jury reaches a different or seemingly inconsistent verdict for another. The court stated that due process does not require permitting the defendant to obtain an acquittal on the basis of the inconsistent verdict. *Id.* at 368-69. In this case, the jury's verdict appears to be the result of compromise. The verdicts are not inconsistent – the jury must have found Defendant less culpable than Mr. Reed.

Under La. R.S. 14:24, "[a]ll persons concerned in the commission of a crime, whether present or absent, and whether they directly commit the act constituting the offense, aid and abet in its commission, or directly or indirectly counsel or procure another to commit the crime, are principals." "Only those persons who knowingly participate in the planning or execution of a crime are principals to that crime." *State v. Pierre*, 93-893 (La. 2/3/94), 631 So.2d 427, 428;

State v. King, 06-554 (La. App. 5 Cir. 1/16/07), 951 So.2d 384, 390, *writ denied*, 07-371 (La. 5/4/07), 956 So.2d 600.[2]

Mere presence at the scene of a crime does not make one a principal to the crime. *Id.* However, "[i]t is sufficient encouragement that the accomplice is standing by at the scene of the crime ready to give some aid if needed, although in such a case it is necessary that the principal actually be aware of the accomplice's intention." *State v. Page*, 08-531 (La. App. 5 Cir. 11/10/09), 28 So.3d 442, 449, *writ denied*, 09-2684 (La. 6/4/10), 38 So.3d 299. An individual may only be convicted as a principal for crimes in which he personally has the requisite mental state; the intent of the accomplice cannot be imputed to the defendant. *Williams*, 20-46, 308 So.3d at 822 (citing *State v. Chattman*, 01-556 (La. App. 5 Cir. 10/30/01), 800 So.2d 1043, 1048, *writ denied*, 01-3320 (La. 12/19/02), 833 So.2d 332).

In the instant case, the State presented sufficient evidence at trial to establish that Defendant was at least a principal to the second degree kidnapping of Mr. Cooper, which ultimately led to his physical injuries. The evidence showed that Defendant and Mr. Cooper planned to meet, and she directed him to an Airbnb in Kenner. After his arrival, he was confronted by Mr. Reed, who was armed with a gun and an aluminum bat. While Mr. Reed physically assaulted him, Defendant provided assistance by retrieving zip ties and securing his hands and legs, at Mr. Reed's direction. She also searched Mr. Cooper's pockets, removed his phone, wallet, and keys, and gave them to Mr. Reed. Further, Mr. Cooper testified that Defendant continued to assist Mr. Reed throughout the incident. She complied with her co-defendant's instructions, retrieving cleaning supplies to wipe away bloodstains and preparing the vehicles for departure. When Mr. Cooper was forcibly moved from the Airbnb, Defendant followed in a separate vehicle. Later,

[2] The jury was instructed as to the definition of principals in the written jury charges.

when Mr. Cooper was transferred to her car, she did not attempt to help him escape. Instead, she continued to follow Mr. Reed's directives, and drove the vehicle as Mr. Cooper remained restrained. Mr. Cooper testified that he pleaded with her for help, but she shook her head indicating refusal.

Defendant highlights inconsistencies in Mr. Cooper's testimony regarding her demeanor and actions during the incident. On cross-examination, he was questioned about whether she appeared calm or emotional, if she whimpered or screamed, and whether Mr. Reed yelled at her. While Mr. Cooper initially stated that Defendant was calm, he later acknowledged that she whimpered when he was being beaten and became emotional when Mr. Reed pulled out the gun. He also admitted that, in the statement he gave four days after the incident, he indicated that Defendant stopped showing emotion when Mr. Reed yelled at her. On the stand he said that he did not recall Mr. Reed yelling at Defendant and that his "statement [at trial] was accurate."

Additionally, Mr. Cooper denied that Mr. Reed pointed a gun at Defendant, struck her, or forced her to participate. The jury heard all of this evidence, including these inconsistencies, and was able to weigh the credibility of Mr. Cooper's statements. The credibility of a witness is within the discretion of the trier of fact, who may, in whole or in part, accept or reject testimony of any witness. *See State v. Lavigne*, 22-282 (La. App. 5 Cir. 5/24/23), 365 So.3d 919, 940, *writ not considered*, 23-1119 (La. 10/10/23), 370 So.3d 1086.

Considering the evidence presented at trial, we find that a rational trier of fact could have reasonably concluded that Defendant actively participated in the second degree kidnapping of Mr. Cooper. Defendant invited him to the Airbnb, where he was ambushed by her husband shortly after his arrival. She restrained Mr. Cooper, retrieved the vehicle, and assisted in transporting him. She also cleaned the residence and failed to intervene when she had the opportunity. Additionally,

she warned Mr. Reed about potential witnesses outside in the vicinity of the rental, and when she instructed him to stop cutting Mr. Cooper, he complied. A defendant is deemed a principal when they aid, abet, or otherwise assist in the commission of a crime. *See* La. R.S. 14:24. Her actions demonstrate her role as a principal under La. R.S. 14:24. Acting in concert, each person becomes responsible not only for his own acts, but for the acts of the others. *State v. Anderson*, 97-1301 (La. 2/6/98), 707 So. 2d 1223, 1224; *State v. Jones*, 49,830 (La. App. 2 Cir. 5/20/15), 166 So. 3d 406, 413, *writ not cons.*, 15-1524 (La. 3/14/16), 188 So. 3d 1067.

Therefore, we find that the evidence, when viewed in the light most favorable to the prosecution, was sufficient for a rational trier of fact to find Defendant guilty as charged for the offense of second degree kidnapping and, therefore, the evidence was sufficient to support her conviction of the lesser-included verdict of attempted second degree kidnapping under the *Jackson* standard. Because we find that the verdict was not contrary to law and evidence, and the trial court correctly denied Defendant's motion for new trial under La. C.Cr.P. art. 851, this assignment of error lacks merit.

Denial of Motion for Jury Instruction on Compulsion

Before trial, Defendant filed a Motion for Special Jury Instruction, requesting that the court include the special jury instruction for compulsion to offer the defense at trial. Defendant requested the following charge:

> The defendant's conduct, otherwise criminal, is justified if the offense charged was committed through the compulsion of threats by another of death or great bodily harm and the defendant reasonably believed the person making the threat was present and would carry out the threats immediately if the defendant did not commit the crime.
>
> Thus, if you find:
> (1) That the defendant committed the offense charged because he was compelled by threats of death or great bodily harm; and
> (2) That the defendant reasonably believed the person making the threat[s] was present and would carry out threats immediately if the defendant did not commit the crime; then you must find the defendant not guilty.

The State filed a response, arguing that compulsion must be proven by a preponderance of admissible evidence and attorney arguments alone are insufficient. The State mentioned that the court had previously denied Mr. Reed's severance motion without prejudice and warned that the assertion of a compulsion defense after the State rests could raise severance issues mid-trial, risking a mistrial and wasting resources. To prevent this, the State proposed an *ex parte* discussion between the court and defense counsel, limited to the evidence defendant intended to introduce in support of compulsion. The State waived any objection to this proceeding *ex parte*, provided it remained within that scope, allowing the court to assess whether the jury instruction was warranted and whether severance should be revisited. The State concluded that further inquiry into the request was appropriate and emphasized judicial economy.

The court heard the motions requesting special jury instructions and for severance before trial. As to the jury instruction, the judge decided to delay ruling on the jury instructions until a jury charge conference to assess the appropriateness of the charges based on the presentations. The State requested an "ex parte or in-camera determination" to prevent a mid-trial mistrial regarding Defendant's request and to address any potential need to revisit the defense's Motion to Sever. The State also highlighted that the jury instructions for Mr. Reed and Defendant involve different evidentiary issues. It was clarified that Defendant's counsel requested a jury instruction for compulsion, and Mr. Reed's counsel requested a jury instruction relating to reasonable force/self-defense.

The State argued that to meet the burden for compulsion, the defense must present concrete evidence or testimony, rather than relying solely on attorney arguments. The State contended that without such evidence, the request could require reconsideration of Defendant's Motion to Sever. The State objected,

asserting that a compulsion defense must be substantiated before being presented to the jury and offered to discuss the issue privately if necessary. In response, Mr. Reed's counsel maintained that while Defendant was not required to testify to establish her affirmative defense, the State's own evidence supported her claim. Defendant's counsel argued that the video footage showed Mr. Reed packing up, leaving, and hiding in a porta-potty, while Defendant was seen greeting the victim. Additionally, counsel pointed to the victim's statement that Defendant acted under Mr. Reed's direction, asserting that this evidence supported the argument that she followed his orders while he possessed a gun and a bat.

Defense counsel stated that, just two days before the last trial setting, neither the State nor the judge had reviewed the video. Counsel objected to the denial of the instruction at that time and contended that no evidence showed Defendant knew Mr. Reed would enter the house with a gun and bat. The judge asked whether Defendant intended to testify and stated that she would be sworn in to determine this. Defendant's counsel objected, arguing that the inquiry was premature and stating that he did not anticipate calling her as a witness, which he believed she agreed with. The judge expressed concern about a mistrial and later indicated her intent to swear in Defendant to confirm her intentions before making a decision.

Defendant was sworn in and confirmed that she understood it was entirely her decision whether to testify at trial. She also acknowledged her right to remain silent and that her silence could not be used against her. The judge noted that circumstances could change after hearing the State's case and asked whether, at that moment, Defendant intended to testify. Defendant responded that she did not. The judge requested to review the "30-minute condensed" surveillance video, the transcript of the victim's recorded statement, and an excerpt from the police report.

Afterward, the State provided for the record that both parties had proffered State's Exhibit A (the transcript of the complaining witness's interview), and

State's Exhibit B (the supplemental police narrative detailing the contents of the seized surveillance footage). The State also indicated that Exhibit B included a copy of the disc. Additionally, the State clarified that the condensed version of the video viewed by the court had been provided to Mr. Reed's counsel and would be given to Defendant's counsel upon his arrival.

Based on that evidence, the district court found that Defendant had not met her burden of proving compulsion by a preponderance of the evidence and, therefore, the court did not intend to give the instruction at that time. The judge explained that the request would be pretermitted until the case progressed further, particularly given that the key question for compulsion is whether Defendant reasonably believed the person making the threat was present and would immediately carry out the threat if she did not commit the crime. Defendant had indicated she did not intend to testify at that time, and the court did not believe she could meet her burden based on the evidence presented. Accordingly, the court denied the motion for a special jury instruction without prejudice, preserving the issue should it become necessary to revisit the ruling later in the proceedings.

The judge acknowledged the State's concerns but explained that because of the court's inclination not to grant the compulsion instruction, it found that severance was not appropriate. Therefore, the judge decided to maintain her prior ruling and denied the Motion to Sever. Thereafter, trial commenced and the co-defendants were tried together. During a jury charge conference, the trial judge maintained her denial of the compulsion instruction.

After Defendant's conviction, she filed a Motion for New Trial under La. C.Cr.P. art. 851, arguing that the verdict was contrary to the law and evidence and that court's rulings resulted in prejudicial error. She also filed a Motion for Arrest of Judgment under La. C.Cr.P. art. 859, asserting that the verdict was not responsive to "the indictment" or was otherwise defective.

In her supporting memorandum, Defendant argued that the trial court's denial of her requested compulsion jury instruction constituted prejudicial error. She contended that this ruling prevented her from fully presenting her defense, as the jury was not instructed on her claim that she acted under the immediate threat of harm from Mr. Reed. She maintained that had the instruction been given, the jury could have properly considered whether her actions met the legal threshold for compulsion under La. R.S. 14:18(6). Defendant further asserted that the prosecution was aware of the circumstances supporting her compulsion defense, including her fear of Mr. Reed, and had even discussed relocating her to witness protection. Despite this, the State argued against severance and opposed giving the jury instruction. Defendant maintained that this omission of the jury instruction deprived the jury of critical information necessary to evaluate her defense.

Additionally, Defendant argued that her right to testify was abridged, as she wanted to testify but was advised against it by her trial counsel, who withdrew after her conviction. She asserted that her testimony would have further supported her compulsion defense, and without it, the jury lacked a full understanding of her claims. Attached to the motion were three affidavits: one by Defendant, one by Jerry L. Reed (Defendant's father), and one by LaDauna Overby (Defendant's best friend). These affidavits provided additional details about her fear of Mr. Reed and her state of mind leading up to the offense. She mentions that the court's ruling before trial undermined her defense. She avers that the jury should have been allowed to consider whether the evidence supported a justification defense rather than being limited to the trial judge's assessment. Defendant believes the jury would have concluded she acted under compulsion, especially given their verdict of attempted kidnapping, which indicated disagreement on her guilt for the charged offense. She also argues that the lack of an accessory-after-the-fact verdict option

added to jury confusion, which could have been mitigated by proper instructions on the law of compulsion.

The State filed a response to Defendant's memorandum, arguing that the trial court properly denied the compulsion jury instruction. The State contended that the court reviewed the evidence at Defendant's request and correctly determined that a compulsion defense could not be established without sufficient supporting evidence by a preponderance. It concluded that the denial of the requested jury instruction did not result in prejudicial error. The State argues that the trial court properly denied Defendant's requested jury instruction on compulsion. The State avers that Defendant did not testify, and further, the surveillance footage, along with other evidence, contradicted a compulsion defense. The State asserts the victim testified that Defendant followed her co-defendant's instructions without being threatened, remained calm, refrained from assisting the victim or calling the police, and actively participated in the offense. The State further emphasized that the trial court allowed the defense to address compulsion during *voir dire* and through questioning, and Defendant was not prevented from presenting her chosen defense. Therefore, the State argued that the denial of the compulsion instruction did not result in prejudice or violation of Defendant's constitutional rights, and the claim lacks merit.

La. C.Cr.P. art. 802 mandates that the trial court instruct the jury on the law applicable to each case. The trial court is required to charge the jury on the law applicable to any theory of defense, when properly requested, which the jurors could reasonably infer from the evidence. *State v. Ball*, 12-710 (La. App. 5 Cir. 4/24/13), 131 So.3d 896, 900, *writ denied sub nom. State ex rel. Ball v. State*, 13-1329 (La. 11/8/13), 125 So.3d 450, and *writ denied*, 13-1139 (La. 11/15/13), 125

So.3d 1103.[3] La. C.Cr.P. art. 807 mandates that a requested special charge shall be given by the court if it does not require qualification, limitation, or explanation, and if it is wholly pertinent and correct. *State v. Batiste*, 06-824 (La. App. 5 Cir. 3/13/07), 956 So.2d 626, 636, *writ denied sub nom. State ex rel. Batiste v. State*, 07-892 (La. 1/25/08), 973 So.2d 751. It need not be given if it is included in the general charge or in another special charge to be given. *See id.* at 636-37; *State v. Spears*, 504 So.2d 974, 977 (La. App. 1st Cir. 1987), *writ denied*, 507 So.2d 225 (La. 1987).

As a general matter, a district court has the duty to instruct the jurors as to "every phase of the case supported by the evidence whether or not accepted by him as true" and that duty extends to "any theory ... which a jury could reasonably infer from the evidence." *State v. Joseph*, 23-446 (La. App. 5 Cir. 4/24/24), 386 So.3d 688, 693. This evidence presented at trial, however, must support a requested written charge for the jury. *Id*. A district court's failure to give a requested jury instruction constitutes reversible error only when there is a miscarriage of justice, prejudice to the substantial rights of the accused, or a substantial violation of a constitutional or statutory right. *Id*.

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[3] Moreover, La. C.Cr.P. art. 802 mandates that the trial court instruct the jury on the law applicable to each case. *State v. Batiste*, 06-824, p. 14 (La. App. 5 Cir. 3/13/07), 956 So.2d 626, 636, *writ denied*, 07-0892 (La. 1/25/08), 973 So.2d 751. The trial court is required to charge the jury on the law applicable to any theory of defense, when properly requested, which the jurors could reasonably infer from the evidence. *Id.* Under La C.Cr.P. art. 807, a requested special charge shall be given by the court if it does not require qualification, limitation, or explanation, and if it is wholly pertinent and correct. *Id.* The evidence presented at trial must support the requested special charge. *Id.* Failure to give a requested jury instruction constitutes reversible error only when there is a miscarriage of justice, prejudice to the substantial rights of the accused, or a substantial violation of a constitutional or statutory right. *State v. Lawson*, 08-123 (La. App. 5 Cir. 11/12/08), 1 So.3d 516, 527.

State v. Ball, 12-710 (La. App. 5 Cir. 4/24/13), 131 So.3d 896, 900–01, *writ denied sub nom. State ex rel. Ball v. State*, 13-1329 (La. 11/8/13), 125 So.3d 450, and *writ denied*, 13-1139 (La. 11/15/13), 125 So.3d 1103

As discussed, prior to trial, Defendant requested a special jury instruction for the defense of "compulsion." This appears to be for the defense of justification in accordance with La. R.S. 14:18, which states in pertinent part:

> The fact that an offender's conduct is justifiable, although otherwise criminal, shall constitute a defense to prosecution for any crime based on that conduct. This defense of justification can be claimed under the following circumstances:
>
> ***
>
> (6) When any crime, except murder, is committed through the compulsion of threats by another of death or great bodily harm, and the offender reasonably believes the person making the threats is present and would immediately carry out the threats if the crime were not committed[.]

State v. Barnes, 489 So.2d 402, 404 (La. App. 5 Cir. 1986), *writ denied*, 494 So.2d 1174 (La. 1986).

> The defense of compulsion must be established by defendant by a preponderance of evidence. . . . An appellate court, in reviewing a criminal conviction, must determine whether the evidence, when viewed in the light most favorable to the prosecution, was sufficient for a rational trier of fact to conclude beyond a reasonable doubt that the accused was guilty of every element of the offense. . . . In reviewing a conviction in which the defendant offered evidence tending to establish the defense of compulsion, an appellate court must determine whether a rational trier of fact could have concluded by a preponderance of the evidence, viewed in the light most favorable to the prosecution, that the defendant's criminal actions were not compelled.

Id. (Citations omitted).

In *Barnes*, the defendant was convicted of issuing worthless checks. 489 So.2d at 406-07. She testified that she was acting under threat of death by her husband when she cashed the checks and that her husband had committed prior violent acts against her. She admitted that her husband sometimes waited in the car or other areas of the store while she cashed the checks. The prosecutor pointed out that pictures taken of the transactions clearly showed that the defendant was alone when she cashed the checks. This Court held that the defendant failed to meet her burden of proof as to the defense of compulsion. It stated that there was some question as to whether the defendant's husband was "present and would

immediately carry out the threat if the crimes were not committed," that the defendant's husband was seventy-six-years-old, twenty-two years older than the defendant, and that the defendant admitted she had four prior forgery convictions, thereby indicating that her credibility was very questionable. 489 So.2d at 406-07.

In *State v. Wallis*, 03-1415 (La. App. 5 Cir. 3/30/04), 871 So.2d 552, 555, the defendant argued that the trial court erred by denying her requested jury charge on justification under La. R.S. 14:18(6). She claimed she acted under duress, fearing homelessness and abuse from her sister and her sister's boyfriend if she did not steal from Mervyn's. Citing her limited mental capacity and inability to recognize alternatives, she asserted the instruction was warranted under La. C.Cr.P. arts. 802 and 807. *Id*. at 556. After closing arguments, defense counsel requested a jury instruction on justification. The State objected, arguing no evidence showed the defendant was threatened with death or great bodily harm. Defense counsel maintained it was a fact issue for the jury and that she had made a *prima facie* case of the defendant's fear and the boyfriend's presence. The State mentioned the boyfriend was not called as a witness.

In *Wallis*, *supra*, we found that the justification defense was not supported by the evidence. This Court stated there was no evidence that proved the defendant committed the crime under threats of death or great bodily harm. The defendant admitted that the man who initially entered the store with her did not tell her to steal the items. An investigator testified that the man only stayed with her for a few minutes and then left prior to her stealing the items. The surveillance video of the defendant at Mervyn's clearly showed that she was alone when she stole the items, which she stole because her sister needed them, in hopes her sister would not lock her out of the house. However, this Court explained that, on cross-examination, the defendant testified that when she was previously convicted of theft thirteen times, and testified her sister did not tell her to steal. Based on the record, we found that

the trial court did not err in failing to give a justification charge to the jury. *Id*. at 557.

To contrast, the fourth circuit in *State v. Jackson*, 97-2220 (La. App. 4 Cir. 5/12/99), 733 So.2d 736, interpreted La. R.S. 14:18(6) more broadly. There, the defendant was convicted of attempted perjury. On appeal, she contended that her trial counsel was ineffective for failing to request that the jury be charged regarding the defense of justification under La. R.S. 14:18. In support of her argument, the defendant claimed that her own testimony, as well as her mother's, established that she had committed perjury only because her life and the lives of her family members were being threatened. The appellate court stated that there was no evidence that someone with an apparent ability to immediately carry out the alleged threats was present in the courtroom when the defendant testified falsely. Nevertheless, the appellate court found that the defendant could escape criminal liability if the jury believed she acted "under a duress of circumstances to protect life or limb or health in a reasonable manner and with no other acceptable choice.'" *Id*. at 742. The appellate court also stated in pertinent part: "A failure to provide a jury instruction is prejudicial where, without the applicable charge, the jury is unable to understand that if the omitted conditions have been met, the defendant cannot be found guilty as charged." *Id*. Thus, the appellate court in *Jackson* concluded that a jury charge on the justification defense would have been appropriate, defense counsel was ineffective for failing to request it, and the defendant was entitled to a new trial.

In the instant case, we find that the trial court did not err in denying the jury instruction. While Defendant requested the instruction, the evidence presented at trial does not appear to establish by a preponderance of the evidence that she acted under the immediate threat of death or great bodily harm, as required by La. R.S. 14:18(6).

At trial, Mr. Cooper testified that when he entered the Airbnb, Defendant did not respond when he repeatedly called for help. He further stated that Defendant remained calm, followed Mr. Reed's instructions, and did not visibly attempt to intervene or stop the attack. While he recalled hearing her whimpering, he confirmed that he never saw her physically harmed or directly threatened by Mr. Reed. He also testified that Defendant tied his hands and legs with zip ties, searched his pockets, and handed Mr. Reed his belongings when directed to do so. She also warned Mr. Reed about others being outside and instructed him to stop cutting Mr. Cooper, and Mr. Reed complied. Additionally, surveillance footage showed Defendant moving between the vehicles, retrieving items, and driving the vehicle. Mr. Cooper further testified that while he was in the vehicle with Defendant and Mr. Reed was outside searching his vehicle, he unsuccessfully begged Defendant for help.

Under the circumstances, we find that the judge did not err in refusing to give the proposed jury instruction. The record does not show that Defendant reasonably believed Mr. Reed would immediately carry out threats of death or great bodily harm if she did not comply. Therefore, the elements required for a compulsion instruction were not established by Defendant by a preponderance of the evidence. Furthermore, we find that there was no miscarriage of justice, prejudice to the substantial rights of Defendant, or occurrence of a substantial violation of a constitutional right. Thus, this assignment of error is also without merit.

Motion to Sever

Mr. Reed re-urged his pretrial Motion to Sever after learning Defendant's counsel requested a compulsion jury instruction. In her second assignment of error, Defendant asserts that the motion and objection filed by her co-defendant were also applicable to her case. She explains that the Motion to Sever was tied to the

request for the compulsion jury instruction. She contends that, the need for severance, along with the requested jury instruction remained critical, whether she testified, or not. Defendant maintains that the combined denial of the compulsion jury instruction and the Motion to Sever prevented the trial court from recognizing that a severance was necessary to serve the ends of justice, and it was error not to grant the motion to sever.

The State counters that Defendant failed to establish any prejudice resulting from the denial of her co-defendant's Motion to Sever. The trial court acted within its discretion in denying the motion, as Defendant did not demonstrate that the joint trial caused antagonistic defenses or introduced evidence inadmissible in a separate trial. The victim's testimony regarding Defendant and co-defendant's actions was subject to cross-examination by both defense counsels. Neither the co-defendant nor Defendant testified or introduced evidence, and the record shows no evidence admitted that would have been inadmissible in a separate trial. Consequently, the State argues that the denial of severance did not prejudice Defendant, and no relief is warranted.

La. C.Cr.P. art. 704 provides the following regarding severance:

> Jointly indicted defendants shall be tried jointly unless:
> (1) The state elects to try them separately; or
> (2) The court, on motion of the defendant, and after contradictory hearing with the district attorney, is satisfied that justice requires a severance.

Whether justice requires a severance must be determined by the facts of each case. *State v. Hayden*, 09-954 (La. App. 5 Cir. 5/11/10), 41 So.3d 538, 543, *writ denied*, 10-1382 (La. 1/14/11), 52 So.3d 899. A defendant is not entitled to a severance as a matter of right, but the decision is one resting within the sound discretion of the trial court. *State v. Prudholm*, 446 So.2d 729, 741 (La. 1984). The ruling on a motion to sever will not be overturned unless it is manifestly erroneous and

injurious to the defendant. *State v. Molette*, 17-697 (La. App. 5 Cir. 10/17/18), 258 So.3d 1081, 1089, *writ denied*, 18-1955 (La. 4/22/19), 268 So.3d 304.

A severance is necessary if the defenses of the co-defendants are mutually antagonistic to the extent that one co-defendant attempts to blame the other, causing each defendant to defend against both his co-defendant and the State. *Prudholm, supra*. The defendant bears the burden of proof in a motion to sever. *State v. Coe*, 09-1012 (La. App. 5 Cir. 5/11/10), 40 So.3d 293, 301, *writ denied*, 10-1245 (La. 12/17/10), 51 So.3d 17. A "mere unsupported allegation" that defenses will be antagonistic is not sufficient to require a severance. *Prudholm, supra*. "Justice does not require severance where only the extent of participation of each defendant is at issue." *State v. Duckett*, 12-578 (La. App. 5 Cir. 5/16/13), 119 So.3d 168, 177, *writ denied*, 13-1383 (La. 1/17/14), 130 So.3d 340 (citing to *State v. Gaskin*, 412 So.2d 1007, 1012-13 (La. 1982)). Furthermore, the fact that each defendant has pointed a finger at the other does not make defenses automatically antagonistic. Prejudice must be shown if defendants are to receive separate trials. *State v. Williams*, 416 So.2d 914, 916 (La. 1982). Where the ends of justice will be best served by severance, it should be granted. *Coe, supra.*

In reviewing a pre-trial motion for severance, the Louisiana Supreme Court provided the following in *State v. Lavigne*, 412 So.2d 993, 997 (La. 1982): "It is incumbent upon us to review the validity of the ruling without regard to whether at trial substantial other evidence was introduced or whether his conviction would have been a certainty irrespective of the joint trial."

> When a severance is sought before trial, the standard for obtaining a severance is broader because of the speculation as to what the trial evidence will actually be; and after trial commences, the standard is stricter because at that time the trial judge is able to analyze the evidence which has actually been admitted.

State v. Foret, 96-281 (La. App. 5 Cir. 11/14/96), 685 So.2d 210, 224 n.9. La. Prac. Crim. Trial Prac. § 14:25 (4th ed.) explains:

> If the motion to sever is not made until after the trial commences, the conviction will not be reversed for its denial even if a severance was warranted unless the court finds the defendant "would probably not have been convicted" at a separate trial. If the motion is made pretrial and denied, the appellate court may not consider the weight of the evidence or the certainty of the defendant's conviction in a separate trial in assessing the validity of the trial court's ruling.

Duckett, 119 So.3d at 178.

La. C.Cr.P. art. 842 provides that "[i]f an objection has been made when more than one defendant is on trial, it shall be presumed, unless the contrary appears, that the objection has been made by all the defendants." *State v. Rumley*, 14-1077 (La. App. 4 Cir. 12/16/15), 183 So.3d 640, 670, *writ denied*, 16-65 (La. 1/13/17), 215 So.3d 241, and *writ denied*, 16-36 (La. 3/24/17), 216 So.3d 812. By analogy, that applies to written motions as well. Id. Written motions by co-defendants are presumed to have been made on behalf of all defendants unless the contrary appears. *Id.* Therefore, in the absence of a showing to the contrary, Mr. Reed's pretrial Motion to Sever is presumed to have been made on behalf of both Defendant and Mr. Reed.

In *State v. Reed*, 24-59 (La. App. 5 Cir. 12/30/24), 2024 WL 5244752, this Court addressed this issue in regards to the co-defendant, Mr. Reed's claim. This Court stated that the co-defendant did not offer evidence in support of his pretrial motion for severance. This Court pointed out that instead, he only made general arguments that the defenses presented at trial would be antagonistic. Agreeing with the trial court, this Court found that Mr. Reed's unsupported allegation that the defenses would be antagonistic was not sufficient to require a severance. *Id*. at *10. Similarly, Defendant, did not offer evidence that proved severance was compulsory. Thus, the trial court's initial ruling was proper.

Co-defendant, Mr. Reed re-urged his motion to sever at a second hearing, the day before the start of trial. Precipitated by concerns that denying the motion for severance could lead to a mistrial after the State presented its case-in-chief, the

trial court elected to first determine whether Defendant was entitled to a compulsion jury instruction. To avoid that scenario, the trial judge reviewed a joint proffer of evidence: surveillance footage, a police report excerpt, and the transcript of victim's statement, to assess whether Defendant could meet her burden to establish compulsion by a preponderance of the evidence. After finding Defendant failed to do so, the trial court denied the motion for special jury instruction. Based on this ruling, the court again denied Mr. Reed's motion for severance, but expressed a willingness to revisit this issue, if Defendant decided to testify after all, which could, first cause the court to reconsider its ruling on the motion for special jury instruction. The court observed, "a severance is necessary if the defenses of the codefendants are mutually antagonistic to the extent one co-defendant attempts to blame the other causing each Defendant to defend against both his co-defendant and the State." The court further reasoned that, without a viable compulsion defense, there was no true conflict between Defendant's and Mr. Reed's defenses that warranted separate trials.

In *State v. Burciaga*, 23-13 (La. App. 5 Cir. 11/29/23), 376 So.3d 1159, on appeal, the defendant argued that the trial court erred in failing to sever his trial from that of the co-defendant. *Id*. at 1175. There, the Motion to Sever was filed prior to trial, and defendant alleged "conflicting and antagonistic defenses" but did not elaborate or give details specifying the conflicting and antagonistic defenses. At the hearing on the motion, the district court asked if one defendant is going to point the finger at the other defendant. Counsel for each of the defendants acknowledged the possibility that their client would accuse the other, depending on how the trial progressed. The trial court denied the motion. *Id*. at 1176. This Court found that no evidence was presented in support of counsels' assertions that the defenses would "possibly and potentially" be antagonistic, and the trial court did not err by denying the Motion to Sever. *Id*. at 1777.

In this case, no additional evidence was presented to establish that the defenses were mutually antagonistic beyond counsel's argument that a compulsion defense would conflict with Mr. Reed's self-defense theory. In *Duckett*, *supra*, this Court reiterated that "justice does not require severance where only the extent of participation of each defendant is at issue." On appeal, Defendant primarily reiterates her argument that the jury instruction for compulsion should have been granted but does not show how the trial court's denial of the motion to sever caused her prejudice. Without a showing of prejudice, the trial court's ruling was not an abuse of discretion. Therefore, this assignment of error lacks merit, and Defendant was not entitled to a new trial on the basis of the trial court's denial of the motion to sever.

Excessiveness of Sentence

In Defendant's third assignment of error, she contends the trial court erred by imposing a sentence of eleven years for the crime of attempted second degree kidnapping. Defendant argues that her sentence should not have been more than one-half of the thirteen year sentence received by her co-defendant for the crime of second degree kidnapping. At the time of the offense, La. R.S. 14:44.1 stated, "Whoever commits the crime of second degree kidnapping shall be imprisoned at hard labor for not less than five nor more than forty years. At least two years of the sentence imposed shall be without benefit of parole, probation, or suspension of sentence." La. R.S. 14:27(D)(3), the attempt statute, provides, "In all other cases he shall be fined or imprisoned or both, in the same manner as for the offense attempted; such fine or imprisonment shall not exceed one-half of the largest fine, or one-half of the longest term of imprisonment prescribed for the offense so attempted, or both."

The district court sentenced Defendant to eleven years imprisonment at hard labor, with the full term to be served with benefit of parole. The midpoint of the

sentencing range for the crime of second degree kidnapping is 22.5 years – therefore, the sentence imposed was less than half of the maximum sentence Defendant could have received for her attempt conviction. Thus, we do not find the trial court erred by sentencing Defendant to eleven years for the crime of attempted second degree kidnapping.

As previously mentioned, the entire term of Defendant's sentence was imposed with benefits. La. R.S. 14:27(D)(3) requires that at least one year of the sentence be served without benefit of probation, parole, or suspension of sentence. Because the trial court failed to impose a restriction on benefits, we find Defendant received an illegally lenient sentence.

Generally, such conditions are deemed to exist by operation of law. La. R.S. 15:301.1; *See State v. Williams*, 00-1725 (La. 11/28/01), 800 So.2d 790, 799. However, the trial court's failure to impose the statutory restrictions is not cured by La. R.S. 15:301.1 because the portion of the sentence to be served without benefits -- at least one year in Defendant's case -- is left to the discretion of the trial court. *State v. Shelby*, 18-186, (La. App. 5 Cir. 12/27/18), 263 So.3d 1223, 1228-29.

Therefore, we vacate Defendant's sentence and remand the matter for the court to impose a sentence that complies with the benefits provision under La. R.S. 14:44.1 and 14:27. *See id.*

DECREE

Considering the foregoing, Defendant's conviction is affirmed. We vacate her sentence and remand the matter for further proceedings consistent with this opinion.

CONVICTION AFFIRMED;
SENTENCE VACATED;
REMANDED

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NOTICE OF JUDGMENT AND CERTIFICATE OF DELIVERY

I CERTIFY THAT A COPY OF THE OPINION IN THE BELOW-NUMBERED MATTER HAS BEEN DELIVERED IN ACCORDANCE WITH **UNIFORM RULES - COURT OF APPEAL, RULE 2-16.4 AND 2-16.5** THIS DAY **APRIL 2, 2025** TO THE TRIAL JUDGE, CLERK OF COURT, COUNSEL OF RECORD AND ALL PARTIES NOT REPRESENTED BY COUNSEL, AS LISTED BELOW:

Curtis B. Pursell

CURTIS B. PURSELL
CLERK OF COURT

24-KA-329

E-NOTIFIED
24TH JUDICIAL DISTRICT COURT (CLERK)
HONORABLE SHAYNA BEEVERS MORVANT (DISTRICT JUDGE)
RALPH S. WHALEN, JR. (APPELLANT)
JULIET L. CLARK (APPELLEE)
THOMAS J. BUTLER (APPELLEE)

MAILED
HONORABLE PAUL D. CONNICK, JR.
(APPELLEE)
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