



**NUMBER 13-16-00017-CR**

**COURT OF APPEALS**

**THIRTEENTH DISTRICT OF TEXAS**

**CORPUS CHRISTI - EDINBURG**

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**THE STATE OF TEXAS,**

**Appellant,**

**v.**

**KAREN KENNEDY,**

**Appellee.**

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**On appeal from the County Court at Law No. 3  
of Nueces County, Texas.**

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## **MEMORANDUM OPINION**

**Before Chief Justice Valdez and Justices Longoria and Hinojosa  
Memorandum Opinion by Justice Hinojosa**

Appellee Karen Kennedy was charged by information with assault causing bodily injury, a class-A misdemeanor. See TEX. PENAL CODE ANN. § 22.01 (West, Westlaw through Ch. 49 2017 R.S.). The State appeals the trial court's order granting Kennedy's motion to quash the information and dismissing the charge. By one issue, the State argues the trial court erred in granting Kennedy's motion because "[t]he Complaint and

Information are valid on their face.” We reverse and remand.

## I. BACKGROUND

The State filed an information signed by an assistant district attorney which states in pertinent part the following:

[U]pon the written complaint of [the witness] being filed herewith, and, on behalf of the State of Texas, presents in and to said Court of Nueces County, Texas, that, heretofore, to-wit: on or about May 3, 2013, and anterior to the filing of this Complaint, in Nueces County, State of Texas, **KAREN KENNEDY** did then and there intentionally, knowingly, or recklessly cause bodily injury to LACEY SPARKMAN by STRIKING LACEY SPARKMAN WITH THE DEFENDANT’S HAND OR PUSHING LAC[E]Y SPARKMAN WITH THE DEFENDANT’S HAND OR KICKING LACEY SPARKMAN,

And it is further presented in and to said Court that LACEY SPARKMAN is a member of the defendant’s family or member of the defendant’s household, as described by Section 71.003 or 71.005, Family Code, against the peace and dignity of the State.

(Emphasis in original). The information was accompanied by a sworn complaint, which was signed by a witness before an assistant district attorney. The complaint alleged that:

On or about May 3, 2013, and anterior to the filing of this Complaint, in Nueces County, State of Texas, **KAREN KENNEDY** did then and there intentionally, knowingly, or recklessly cause bodily injury to LACEY SPARKMAN by STRIKING LACEY SPARKMAN WITH THE DEFENDANT’S HAND OR PUSHING LAC[E]Y SPARKMAN WITH THE DEFENDANT’S HAND OR KICKING LACEY SPARKMAN,

And it is further presented in and to said Court that LACEY SPARKMAN is a member of the defendant’s family or member of the defendant’s household, as described by Section 71.003 or 71.005, Family Code, against the peace and dignity of the State.

(Emphasis in original).

Kennedy later filed a “Motion to Quash Information and Dismiss Charge.” Kennedy attached to her motion a copy of the information and complaint which she received through discovery from the State. The exhibit differed from the information and

complaint filed with the clerk in several respects: (1) neither document was signed; (2) the file stamp on the complaint reflected that the document was “FILED” but did not contain the initial of the district clerk or her deputy; (3) the information contained no file stamp of any kind; and (4) the cause number on the information and complaint were affixed by stamp instead of being hand-written.

The information and complaint relied upon by Kennedy does not appear in the clerk’s record except as an attachment to her motion to quash. Nevertheless, Kennedy argued in her motion that the charging instrument was defective because it was not signed. At the hearing on Kennedy’s motion to quash, the assistant district attorney explained that the unsigned documents were “uploaded into the system for discovery” prior to signing and filing with the clerk. She further explained that “most of the time, 90 percent of time, we upload these documents and then they’re subsequently signed and then filed to the clerk.”

The trial court took the matter under advisement and later signed an order granting Kennedy’s motion to quash and dismissing the charge without prejudice. The State now appeals. See TEX. CODE CRIM. PROC. ANN. art. 44.01(a)(1) (West, Westlaw through Ch. 49 2017 R.S.) (providing that the State may appeal from the dismissal of an information or complaint).

## **II. MOTION TO QUASH**

### **A. Standard of Review and Applicable Law**

Appellate courts review a trial court’s ruling on a motion to quash a charging instrument de novo. *State v. Zuniga*, 512 S.W.3d 902, 906 (Tex. Crim. App. 2017) (citing

*State v. Barbernell*, 257 S.W.3d 248, 251–52 (Tex. Crim. App. 2008)). The trial court’s ruling should be upheld if it is correct under any theory of law applicable to the case. *Id.*; *State v. Rhinehart*, 333 S.W.3d 154, 161 (Tex. Crim. App. 2011). An information that is valid on its face is sufficient to support a prosecution by information. See *Naff v. State*, 946 S.W.2d 529, 531 (Tex. App.—Fort Worth 1997, no pet.) (citing *Wells v. State*, 516 S.W.2d 663, 664 (Tex. Crim. App. 1974)).

“An ‘information’ is a written statement filed and presented in behalf of the State by the district or county attorney, charging the defendant with an offense which may by law be so prosecuted.” TEX. CRIM. PROC. CODE ANN. art. 21.20 (West, Westlaw through Ch. 49 2017 R.S.). The purpose of an information is to notify the accused of the charged offense and its elements so that she may properly prepare her defense. *State v. Zorrilla*, 404 S.W.3d 734, 736 (Tex. App.—San Antonio 2013, no pet.). Among other requirements, an information “must be signed by the district or county attorney, officially.” TEX. CODE CRIM. PROC. ANN. art. 21.21 (West, Westlaw through Ch. 49 2017 R.S.).

“The affidavit made before the magistrate or district or county attorney is called a ‘complaint’ if it charges the commission of an offense.” *Id.* art. 15.04 (West, Westlaw through Ch. 49 2017 R.S.). A valid complaint is a prerequisite to a valid information. *Id.* art. 21.22 (West, Westlaw through Ch. 49 2017 R.S.). A complaint must, among other requirements, “be signed by the affiant by writing his name or affixing his mark.” *Id.* art. 15.05 (West, Westlaw through Ch. 49 2017 R.S.).

## **B. Analysis**

The State argues that the trial court erred in quashing the information because it is valid on its face. Kennedy concedes that the charging instrument appearing in the clerk's record is "facially valid." Nevertheless, Kennedy relies on the unsigned information and complaint received through discovery from the State. Kennedy maintains that "the question is which charging documents were actually filed, at what time, in what manner, and whether the method of their execution complied with the [Texas Code of Criminal Procedure]."

The unsigned copies of the charging instruments relied on by Kennedy were never filed with the trial court except as attachments to Kennedy's motion to dismiss. The clerk's record provides that the State filed only one information and complaint in this case. The information was properly signed by an assistant district attorney, *see id.* art. 21.21, and the supporting complaint was "signed by the affiant by writing his name or affixing his mark." *Id.* art. 15.05. We conclude that the charging instrument filed by the State is valid on its face. The fact that the State later served an unsigned copy of the charging instrument through discovery does not render the otherwise valid information and complaint defective. *See In re S.J.*, 977 S.W.2d 147, 151 (Tex. App.—San Antonio 1998, no pet.) (noting that defendant's assertion that interlineations in the indictment were made after it was signed was rank speculation, and due to the "presumption of regularity," the interlineation was deemed to have been made before the documents were signed and filed). Therefore, the trial court erred in granting Kennedy's motion to quash the information. *See Zuniga*, 512 S.W.3d at 906; *Naff*, 946 S.W.2d at 531. We sustain the

State's sole issue.

### III. CONCLUSION

We reverse the trial court's order and remand the case for further proceedings consistent with this opinion.

LETICIA HINOJOSA  
Justice

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

Delivered and filed the  
13th day of July, 2017.