# NO. 12-16-00148-CR

# IN THE COURT OF APPEALS

# TWELFTH COURT OF APPEALS DISTRICT

# TYLER, TEXAS

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| ***BRANDON PIPKIN, APPELLANT*** | ***§*** | ***APPEAL FROM THE 159TH*** |
| ***V.*** | ***§*** | ***JUDICIAL DISTRICT COURT*** |
| ***THE STATE OF TEXAS, APPELLEE*** | ***§*** | ***ANGELINA COUNTY, TEXAS*** |

***MEMORANDUM OPINION***

Brandon Pipkin appeals his conviction for sexual assault of a child. In one issue, he contends the evidence is legally insufficient to support his conviction. We affirm.

## BACKGROUND

Appellant was charged by indictment with sexual assault of a child, indecency with a child, and two counts of delivery of a controlled substance. He pleaded "not guilty" to all four counts, and the matter proceeded to a jury trial.

The evidence at trial showed that Appellant gave his daughters, Jane Doe and Mary Doe,[1] methamphetamine on the evening of November 30, 2014. The next morning, Jane Doe woke up on Appellant's bed and believed she had been sexually assaulted. She reported the incident to the Angelina County Sheriff's Department, and Appellant was arrested.

Ultimately, the jury found Appellant "guilty" of all four counts. The jury sentenced Appellant to imprisonment for ninety-nine years for sexual assault, twenty years for indecency, and twenty years for each of the delivery charges. The trial court ordered that the sexual assault and delivery sentences be served concurrently and the indecency sentence be served consecutively. This appeal followed.

[1] We refer to the children as Jane Doe and Mary Doe because that is how they were referred to at trial.

## EVIDENTIARY SUFFICIENCY

In his only issue, Appellant contends the evidence is insufficient to support a finding beyond a reasonable doubt that he committed sexual assault of Jane Doe. Specifically, Appellant contends the lack of DNA evidence linking him to the alleged assault and the conflicting testimony of Jane Doe and Mary Doe created reasonable doubt.

### Standard of Review

The ***Jackson v. Virginia*** legal sufficiency standard is the only standard that a reviewing court should apply in determining whether the evidence is sufficient to support each element of a criminal offense that the state is required to prove beyond a reasonable doubt. ***Jackson v. Virginia***, 443 U.S. 307, 315–16, 99 S. Ct. 2781, 2786–87, 61 L. Ed. 2d 560 (1979); *see* ***Brooks v. State***, 323 S.W.3d 893, 895 (Tex. Crim. App. 2010). Legal sufficiency is the constitutional minimum required by the Due Process Clause of the Fourteenth Amendment to sustain a criminal conviction. *See* ***Jackson***, 443 U.S. at 315–16, 99 S. Ct. at 2786–87; *see also* ***Escobedo v. State***, 6 S.W.3d 1, 6 (Tex. App.—San Antonio 1999, pet. ref'd). The standard for reviewing a legal sufficiency challenge is whether any rational trier of fact could have found the essential elements of the offense beyond a reasonable doubt. *See* ***Jackson***, 443 U.S. at 320, 99 S. Ct. at 2789; *see also* ***Johnson v. State***, 871 S.W.2d 183, 186 (Tex. Crim. App. 1993). The evidence is examined in the light most favorable to the verdict. *See* ***Jackson***, 443 U.S. at 320, 99 S. Ct. at 2789; ***Johnson***, 871 S.W.2d at 186. A successful legal sufficiency challenge will result in rendition of an acquittal by the reviewing court. *See* ***Tibbs v. Florida***, 457 U.S. 31, 41–42, 102 S. Ct. 2211, 2217–18, 72 L. Ed. 2d 652 (1982).

The sufficiency of the evidence is measured against the offense as defined by a hypothetically correct jury charge. *See* ***Malik v. State***, 953 S.W.2d 234, 240 (Tex. Crim. App. 1997). Such a charge would include one that "accurately sets out the law, is authorized by the indictment, does not unnecessarily increase the State's burden of proof or unnecessarily restrict the State's theories of liability, and adequately describes the particular offense for which the defendant is tried." ***Id.***

### Analysis

To satisfy the elements of sexual assault of a child, the State was required to prove that Appellant intentionally or knowingly penetrated the sexual organ of Jane Doe, a child under seventeen at the time of the offense, with his sexual organ. *See* TEX. PENAL CODE ANN.

§ 22.011(a)(2)(A) (West 2011). Appellant maintains that the State failed to carry this burden because no DNA evidence links him to the assault and conflicts in the testimony created reasonable doubt.

At trial, the jury heard two versions of events. According to Jane Doe, she, Mary Doe, and Appellant used methamphetamine in Appellant's bedroom on the evening of November 30, 2014. She stated that she was face-down with her butt in the air, wearing only a t-shirt, on Appellant's bed. She further testified that Appellant was next to her on the bed when she heard a condom wrapper rip and then "felt a push" before passing out. Jane Doe said that she awoke the next morning on Appellant's bed and her vagina hurt. She locked herself in her room until Appellant left on an errand. Jane Doe then called her mother to tell her that she had been sexually assaulted by her father. Jane Doe's mother told her to call the police. Jane Doe gave the same statement to the Sheriff's Department and the sexual assault nurse examiner (SANE). Jane Doe further testified that she had not engaged in consensual sexual intercourse in the previous months.

According to Mary Doe, she spent the night in Appellant's bedroom. She testified that Jane Doe and Appellant spent between fifteen and twenty minutes talking in Jane Doe's bedroom that evening. She further stated that nothing happened between Appellant and her sister in Appellant's bedroom that night.

Norma Sanford, the SANE with Harold's House, testified that she examined Jane Doe on December 2, 2014. During that exam, she found an area of abrasion, where the tissue had been abraded off, that was red, irritated, and very tender. She testified that the abrasion was not more than two or three days old and was consistent with sexual intercourse.

The evidence at trial showed that the forensic scientists were not able to identify Appellant as a contributor of the DNA samples taken from Jane Doe. However, Andrea Smith, a forensic scientist with the Texas Department of Public Safety's crime lab in Houston, testified that the lack of DNA evidence did not rule out the possibility of sexual assault. She explained that a female's DNA can mask a lower level contributor and that sexual assault can occur without leaving detectable evidence.

The State had no burden to provide physical evidence corroborating Jane Doe's testimony. *See* ***Lovings v. State***, 376 S.W.3d 328, 336 (Tex. App.—Houston [14th Dist.] 2012, no pet.) (explaining that state has no burden to produce physical or other evidence corroborating

the testimony of sexual assault victim). Rather, a complainant's testimony alone is sufficient to support a conviction for sexual assault of a child. TEX. CODE CRIM. PROC. ANN. art. 38.07(a), (b)(1) (West Supp. 2016). Additionally, it is the jury's province to determine the credibility of the witnesses and the weight to be given their testimony. ***Chambers v. State***, 805 S.W.2d 459, 461 (Tex. Crim. App. 1991). The jury can choose to believe all, some, or none of the witnesses' testimony. ***Id.*** In doing so, the jury was entitled to credit the testimony of Jane Doe and Sanford, while rejecting Mary Doe's version of events. *See* ***id.***

Based on testimony from Jane Doe and Sanford, the jury could reasonably conclude that Appellant intentionally or knowingly penetrated the sexual organ of Jane Doe, a child under seventeen at the time of the offense, with his sexual organ when she was passed out from methamphetamine. *See* TEX. PENAL CODE ANN. § 22.011(a)(2)(A). Viewing the evidence in the light most favorable to the verdict, we conclude that the jury was rationally justified in finding Appellant guilty of sexual assault of a child. *See* ***Jackson***, 443 U.S. at 315–16, 99 S. Ct. at 2786–87; *see also* ***Brooks***, 323 S.W.3d at 895. Because the evidence is sufficient to support Appellant's conviction, we overrule his sole issue.

## DISPOSITION

Having overruled Appellant's sole issue, we ***affirm*** the judgment of the trial court.

**BRIAN HOYLE**
Justice

Opinion delivered April 19, 2017.
*Panel consisted of Worthen, C.J., Hoyle, J., and Neeley, J.*

(DO NOT PUBLISH)

# COURT OF APPEALS

# TWELFTH COURT OF APPEALS DISTRICT OF TEXAS

# JUDGMENT

**APRIL 19, 2017**

**NO. 12-16-00148-CR**

**BRANDON PIPKIN,**
Appellant
V.
**THE STATE OF TEXAS,**
Appellee

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Appeal from the 159th District Court
of Angelina County, Texas (Tr.Ct.No. 2015-0218)

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THIS CAUSE came to be heard on the appellate record and briefs filed herein, and the same being considered, it is the opinion of this court that there was no error in the judgment.

It is therefore ORDERED, ADJUDGED and DECREED that the judgment of the court below **be in all things affirmed**, and that this decision be certified to the court below for observance.

Brian Hoyle, Justice.
*Panel consisted of Worthen, C.J., Hoyle, J., and Neeley, J.*