

Modify and affirm as modified; Opinion Filed October 30, 2017.



**In The
Court of Appeals
Fifth District of Texas at Dallas**

No. 05-16-01495-CR

**ADRIAN TORRIAN BRIGHAM, Appellant
V.
THE STATE OF TEXAS, Appellee**

**On Appeal from the 283rd Judicial District Court
Dallas County, Texas
Trial Court Cause No. F14-41292-T**

MEMORANDUM OPINION

Before Justices Francis, Stoddart, and Whitehill
Opinion by Justice Stoddart

A jury convicted Adrian Torrian Brigham of stalking. Appellant pleaded true to two enhancement allegations and the court assessed punishment at fifty years' confinement. In a single issue, appellant argues the trial court erred by failing to instruct the jury that the proscribed conduct was engaged in on more than one occasion. In a cross-issue, the State requests we modify the judgment. We modify the judgment and affirm as modified.

The State's indictment alleged that on or about August 11, 2014, appellant sent several threatening text messages and voicemails to the complainant, and this conduct caused the complainant to fear bodily injury and death. Further, the State alleged, on August 8, 2014, appellant sent the complainant several threatening text messages and voicemails. The case

proceeded to trial and a jury convicted appellant. Because the facts presented at trial are unnecessary to resolve this appeal, we decline to detail them. *See* TEX. R. APP. P. 47.1.

The jury charge states in part:

The defendant, Adrian Torrian Brigham, stands charged by indictment with the offense of stalking, alleged to have been committed on or about August 11th, 2014, in Dallas County, Texas. To this charge, the defendant has pleaded not guilty.

A person commits an offense if the person, on more than one occasion and pursuant to the same scheme or course of conduct that is directed specifically at another person, knowingly engages in conduct, that the person knows or reasonably should know the other person will regard as threatening bodily injury or death to the other person and that would cause the other person to be placed in fear of bodily injury or death and would cause a reasonable person to fear bodily injury or death.

...

Now, if you find from the evidence beyond a reasonable doubt that on or about August 11th, 2014, in Dallas County, Texas, the defendant, Adrian Torrian Brigham, did then and there knowingly engage in conduct directed specifically toward [S.T.], hereinafter called complainant, that the defendant knew or reasonably believed the said complainant would regard as threatening bodily injury or death for the said complainant, to-wit: by sending complainant several threatening text messages or voicemails, and the defendant's conduct would cause a reasonable person to fear, and did cause the said complainant to fear, bodily injury or death for the said complainant;

And that on or about the 8th day of August 2014, in said County and State, the defendant did then and there knowingly engage in conduct directed specifically toward the said complainant, that the defendant knew or reasonably believed complainant would regard as threatening bodily injury or death for complainant, to-wit: by sending complainant several threatening text message or voicemails, and the defendant's conduct would cause a reasonable person to fear, and did cause the said complainant to fear, bodily injury or death for the said complainant;

And that each of the foregoing acts was committed pursuant to the same scheme or course of conduct that was directed specifically at complainant, then you will find the defendant guilty of the offense of stalking as charged in the indictment. Unless you so find from the evidence beyond a reasonable doubt or if you have a reasonable doubt thereof, you will acquit the defendant and say by your verdict "Not Guilty."

Appellant argues the gravamen of stalking is that the conduct must be engaged in on more than one occasion but the application paragraph omits this element. It is uncontested that appellant did not object to the charge at trial.

Our review of alleged jury charge error begins with a determination of whether the charge contained any error. *Sakil v. State*, 287 S.W.3d 23, 25 (Tex. Crim. App. 2009). The purpose of the trial judge’s jury charge is to instruct the jurors on all of the law that is applicable to the case. *Vasquez v. State*, 389 S.W.3d 361, 366 (Tex. Crim. App. 2012). “Because the charge is the instrument by which the jury convicts, it must contain an accurate statement of the law and must set out all the essential elements of the offense.” *Id.* We examine the charge “as a whole instead of a series of isolated and unrelated statements.” *Id.*

The second paragraph of the court’s charge sets forth the law, and states a person commits an offense if the person engages in the proscribed act “on more than one occasion.” Then in the application paragraphs, the charge states the jury must find beyond a reasonable doubt that appellant engaged in the conduct on or about August 11, 2014 and on or about August 8, 2014.

After examining the charge as a whole, we conclude the charge is not in error. The charge stated the offense occurs if the proscribed act occurred on more than one occasion and required the jury to find beyond a reasonable doubt that it occurred on or about two specific dates. We conclude the charge contains an accurate statement of the law and sets out all essential elements of the offense. We overrule appellant’s sole issue.

In its cross-issue, the State asserts the trial court’s judgment incorrectly shows “N/A” in the section regarding “plea to 2nd enhancement/habitual paragraph” and “findings on 2nd enhancement/habitual paragraph.” Because the necessary information is available in the record, we modify the trial court’s judgment to show appellant entered a plea of “true” to the second enhancement paragraph and the trial court found the second enhancement paragraph to be “true.” *See* TEX. R. APP. P. 43.2(b); *Asberry v. State*, 813 S.W.2d 526, 529–30 (Tex. App.—Dallas 1991, pet. ref’d).

We modify the trial court's judgment and affirm as modified.

/Craig Stoddart/

CRAIG STODDART
JUSTICE

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TEX. R. APP. P. 47.2(b)
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**Court of Appeals
Fifth District of Texas at Dallas**

JUDGMENT

ADRIAN TORRIAN BRIGHAM, Appellant

No. 05-16-01495-CR V.

THE STATE OF TEXAS, Appellee

On Appeal from the 283rd Judicial District
Court, Dallas County, Texas

Trial Court Cause No. F-1441292-T.

Opinion delivered by Justice Stoddart.

Justices Francis and Whitehill participating.

Based on the Court's opinion of this date, the judgment of the trial court is **MODIFIED** to show appellant Adrian Torrian Brigham pleaded true to the second enhancement/habitual paragraph and the trial court found the second enhancement/habitual paragraph to be true.

As **REFORMED**, the judgment is **AFFIRMED**.

Judgment entered this 30th day of October, 2017.