

Opinion issued December 30, 2010



In The  
**Court of Appeals**  
For The  
**First District of Texas**

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NO. 01-09-00691-CR

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**EMILIANO ESCOBAR, Appellant**  
**V.**  
**THE STATE OF TEXAS, Appellee**

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**On Appeal from the 177th District Court**  
**Harris County, Texas**  
**Trial Court Case No. 1220893**

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**MEMORANDUM OPINION**

A jury convicted appellant Emiliano Escobar of aggravated sexual assault. *See* TEX. PENAL CODE ANN. §§ 22.011 (a)(1)(A), (b)(1)–(2); 22.021 (a)(1)(A)(i), (2)(A)(ii)–(iii) (Vernon Supp. 2010). The court assessed punishment at 25 years’

imprisonment. *See* TEX. PENAL CODE ANN. § 22.021(e) (Vernon Supp. 2010). In his sole issue, Escobar contends that the evidence is factually insufficient to support his conviction. We affirm.

### **Background**

The complainant, P.A., and her friend, A.C., met Escobar outside the El Huracan nightclub on July 6, 2008. P.A. and A.C. had gotten a ride to the club from a friend and were waiting outside the club for other friends to arrive. P.A. and A.C. testified that they grew increasingly uncomfortable as they waited for their friends to arrive because men leaving the club were making suggestive remarks to them. They decided to leave and go to a friend's house, but they did not want to walk because it was late. P.A. and A.C. met Escobar as he was leaving the club. He offered to give them a ride, and P.A. and A.C. testified that they accepted because Escobar did not appear intoxicated and seemed trustworthy. P.A. testified that she sat in the back passenger seat of Escobar's SUV and A.C. sat in the front passenger seat. Escobar removed a pellet rifle from the floorboard of the driver's seat, and placed it in his lap. P.A. and A.C. were startled upon seeing the rifle but did not get out of the vehicle. P.A. testified that she asked Escobar to put the gun in the back. Escobar handed it to P.A., and she placed it in the back of the vehicle.

Escobar drove out of the parking lot and north onto Interstate 45. P.A. and A.C. protested, each telling Escobar that their friend's house was in the opposite direction. Escobar continued to speed in the wrong direction for between 10 to 15 minutes. P.A. testified that when she and A.C. asked Escobar where he was taking them, he smiled and replied "Yeyo," a Spanish term for cocaine. P.A. and A.C. called and sent text messages to friends to tell them where they were and what was happening. Escobar left the highway and sped onto Parramatta Lane. Upon reaching a dead end, Escobar drove over the curb and down a path into a wooded area. A.C. placed a call to 911. Both P.A. and A.C. testified that they fled the SUV while Escobar was driving through the woods.

Without turning the engine off, Escobar stopped the vehicle and chased P.A. and A.C. He reached A.C., pulled her to the ground, tore her clothing, climbed on top of her, and hit her repeatedly. A.C. screamed and told P.A. to hit Escobar. P.A. complied, and A.C. was able to escape. Both P.A. and A.C. again ran away from Escobar.

Escobar caught P.A.'s leg and pulled off one of her shoes. P.A. testified, "He grabbed me from the legs and then from there he pulled me and then he, like, you know, placed his body on top of me." P.A. continued to struggle, but Escobar was able to remove her clothing. Escobar pinned P.A. to the ground and hit her face. P.A. briefly escaped, but she fell in the brush. She testified that Escobar

grabbed her leg and threatened her, stating, “You’re going to die. You’re going to die.” P.A. further testified that while Escobar was raping her, he repeatedly stated, “I’m going to bury you, ” and “I’m going to bury you in that bayou.” Escobar and P.A. saw lights in the distance, and P.A. testified that Escobar ran away and told her to follow him. P.A. ran toward the lights until she reached the responding officers.

Deputies J. Bullock and J. Soto testified that they responded to a disturbance call on the night of the assault and that they were among the first to arrive at the scene. Upon arriving, Bullock and Soto encountered A.C., who, according to Bullock’s testimony, informed the officers that her friend was being raped in the woods. The officers observed P.A. running toward them with no clothing, screaming, “He’s going to kill me.” After placing P.A. in an officer’s vehicle, Soto and Bullock reentered the woods with Deputy C. Anderson of the K-9 unit. After a brief search, the officers discovered Escobar hiding in dense brush. The officers handcuffed Escobar and escorted him out of the woods.

P.A. was taken by ambulance to Houston Northwest Medical Center where L. Mahoney, a certified sexual assault nurse, performed a sexual assault examination on P.A. Mahoney interviewed P.A. and conducted a head-to-toe examination. She observed numerous marks and scratches on P.A.’s entire body and a significant bruise on her arm. She did not find any evidence of bruising or

trauma during the genital exam, but she testified that the absence of such evidence was not unusual when the victim was sexually active prior to the occurrence. Mahoney testified that the results of P.A.'s medical examination and her demeanor throughout the exam were consistent with her allegations of sexual assault.

Escobar testified that he left the club at approximately 1:45 a.m. after consuming three beers. He stated that P.A., whom he believed to be under the influence of drugs, and A.C. approached him asking for cocaine, and when he replied that he did not have any, they asked if he knew where to find some. Escobar responded that he did and agreed to take them there. He testified that he drove P.A. and A.C. to Imperial Valley where he believed they could purchase cocaine. Escobar testified that A.C. told him that she wanted to go home, so he dropped her off at the entrance to the wooded area. He then stopped his vehicle in the woods because P.A. had been caressing and touching him. He stated that she had indicated a desire to be alone with him in a secluded area. Escobar denied raping P.A. and testified that the sexual contact he had with her was consensual. He further testified that when he saw the police flashlight, he ran into the woods because he was afraid of being arrested for having sex in public.

The jury convicted Escobar of aggravated sexual assault, and the court assessed punishment at 25 years in prison. Escobar timely filed a notice of appeal.

## Analysis

Escobar challenges the sufficiency of the evidence to support his conviction. In particular, he contends that his testimony concerning the facts was more compelling than that of the State's witnesses.

### I. Standard of review

Due process requires a court reviewing the sufficiency of evidence to support a criminal conviction to determine “whether, after viewing the evidence in the light most favorable to the prosecution, *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.” *Jackson v. Virginia*, 443 U.S. 307, 319, 99 S. Ct. 2781, 2789 (1979). Our state-law standard for reviewing the factual sufficiency of the evidence mirrors the standard required by the United States Constitution. *See Brooks v. State*, 323 S.W.3d 893, 894–95 (plurality op.), 926 (Cochran, J., concurring) (Tex. Crim. App. 2010). The jury is the exclusive judge of the facts. TEX. CRIM. PROC. CODE ANN. arts. 36.13, 38.04 (Vernon 2007 & 1979); *Brooks*, 323 S.W.3d at 899. Accordingly, “[a]ppellate courts should afford almost complete deference to a jury’s decision when that decision is based upon an evaluation of credibility.” *Lancon v. State*, 253 S.W.3d 699, 705 (Tex. Crim. App. 2008). “The jury is in the best position to judge the credibility of a witness because it is present to hear the testimony, as opposed to an appellate court who relies on the cold record.” *Id.*

## **II. Sexual assault**

A person commits aggravated sexual assault if he “intentionally or knowingly causes the penetration of the anus or sexual organ of another person by any means, without that person’s consent,” and the person “by acts or words places the victim in fear that death, serious bodily injury, or kidnapping will be imminently inflicted on any person, [or] by acts or words occurring in the presence of the victim threatens to cause the death, serious bodily injury, or kidnapping of any person.” TEX. PENAL CODE ANN. § 22.021 (a)(1)(A)(i), (2)(A)(ii)–(iii).

Escobar argues that the evidence was insufficient to support a guilty verdict. Escobar points specifically to the lack of evidence of vaginal trauma or semen found during the rape exam. He also argues that the complainant and A.C. “told an unlikely version of getting into a car with a total stranger,” and that his testimony “was much more logical and cogent and in line with the physical evidence.”

First, Escobar argues that the evidence is factually insufficient because there was no evidence of vaginal trauma or semen found during the sexual assault exam. P.A. testified, however, that Escobar forcibly opened her legs and penetrated her with his penis. Mahoney conducted P.A.’s sexual assault exam and testified that it was not unusual for there to be no evidence of vaginal trauma when the victim had been sexually active prior to the sexual assault. Mahoney further testified that P.A.’s demeanor and physical appearance at the time of the exam were consistent

with P.A.'s allegations of sexual assault. Finally, the absence of semen is consistent with Escobar's own testimony that he did not finish the sex act, and in any case, culmination of the act is not an element of aggravated sexual assault. *See id.* Based on the witnesses' testimony, the jury could have reasonably believed that, due to the circumstances of the assault, P.A. was sexually assaulted despite the lack of physical trauma to her genitalia and the absence of semen found during the sexual assault exam. *See, e.g., Washington v. State*, 127 S.W.3d 197, 205 (Tex. App.—Houston [1st Dist.] 2003, pet. dism'd).

Second, Escobar argues that the evidence is insufficient because the State's witnesses' testimony presented an "unlikely version" of events that "stretched credibility," and the jury therefore failed to properly weigh the credibility of the witnesses. The jury heard P.A.'s testimony, corroborated by A.C., that both women wanted to leave the bar, that they were uncomfortable walking to their friend's house in the dark, and that Escobar appeared trustworthy and polite when he offered them a ride. Both women also testified that Escobar drove them to a secluded area, against their will, and assaulted P.A. and A.C. when they fled. Conversely, Escobar testified that P.A. and A.C. were the first to approach him and that they asked him for cocaine. He further testified that P.A. was caressing him and touching him and that she wanted to have sex with him. The physical evidence—torn clothing, bruises, and scratches on both P.A. and A.C.—is all



inconsistent with Escobar's version of the events. The 911 recording and the evidence of P.A.'s demeanor as described by Mahoney and the responding officers are also inconsistent with Escobar's testimony.

Escobar's challenge to the sufficiency of the evidence is based on the credibility of witnesses and the weight given to their testimony by the jury— issues upon which this Court must defer to the factfinder. *See Lancon*, 253 S.W.3d at 705. The jury was free to believe the complainant's testimony and to disbelieve Escobar's testimony. *See McKinny v. State*, 76 S.W.3d 463, 468–69 (Tex. App.—Houston [1st Dist.] 2002, no pet.). Moreover, the victim's testimony alone is sufficient evidence to support a conviction in a sexual assault case. *Jones v. State*, 817 S.W.2d 854, 856–57 (Tex. App.—Houston [1st Dist.] 1991, no pet.). Considering all of the evidence in the light most favorable to the prosecution, we conclude that the jury could have found beyond a reasonable doubt that Escobar committed all of the essential elements of aggravated sexual assault. *See, e.g., Cruz v. State*, 238 S.W.3d 389, 395–96 (Tex. App.—Houston [1st Dist.] 2006, pet. ref'd) (holding that complainant's testimony was sufficient to support conviction of aggravated sexual assault). We therefore hold that the evidence is sufficient to sustain the jury's guilty verdict, and we overrule Escobar's sole issue.

## Conclusion

We affirm the judgment of the trial court.

Michael Massengale  
Justice

Panel consists of Chief Justice Radack and Justices Massengale and Mirabal.\*

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

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\* The Honorable Margaret Garner Mirabal, Senior Justice, Court of Appeals for the First District of Texas, participating by assignment.