



## Fourth Court of Appeals San Antonio, Texas

### MEMORANDUM OPINION

No. 04-18-00221-CR

Andrew Douglas **BRIGHAM**,  
Appellant

v.

The **STATE** of Texas,  
Appellee

From the 379th Judicial District Court, Bexar County, Texas  
Trial Court No. 2016CR11698  
Honorable Ron Rangel, Judge Presiding

Opinion by: Irene Rios, Justice

Sitting: Rebeca C. Martinez, Justice  
Irene Rios, Justice  
Beth Watkins, Justice

Delivered and Filed: May 8, 2019

### AFFIRMED

Appellant Andrew Brigham appeals his convictions for the offense of aggravated sexual assault. In a single issue, Brigham challenges the sufficiency of the evidence supporting his convictions. We affirm the trial court's judgment.

### BACKGROUND

In Count I, Paragraph A, of a two-count indictment, the State alleged that on December 12, 2015, Brigham

intentionally and knowingly cause[d] the penetration of the SEXUAL ORGAN of [the complainant<sup>1</sup>], ..., by [Brigham's] SEXUAL ORGAN, and during the course of the same criminal episode, [Brigham] acted in concert with a PARTY UNKNOWN to the grand jury, who did intentionally and knowingly cause the penetration of the MOUTH of the complainant, by the SEXUAL ORGAN OF a PARTY UNKNOWN ...

without the complainant's consent and that Brigham compelled the complainant through the use of physical force and violence. In Count 1, Paragraph B, of the indictment the State alleged Brigham "intentionally and knowingly cause[d] the penetration of the SEXUAL ORGAN of [the complainant], ..., by [Brigham's] SEXUAL ORGAN" without the complainant's consent and that Brigham compelled the complainant through the use of physical force and violence and additionally used and exhibited a deadly weapon – a firearm. In Count II of the indictment, the State alleged Brigham "intentionally and knowingly cause[d] the penetration of the ANUS of [the complainant], ..., by [Brigham's] SEXUAL ORGAN" without the complainant's consent and that Brigham compelled the complainant through the use of physical force and violence and also used and exhibited a deadly weapon – a firearm. The indictment included a repeat offender enhancement allegation.

Brigham waived a jury trial and elected for the trial court to sentence him. The trial court found Brigham guilty of both counts of aggravated sexual assault.<sup>2</sup> The trial court additionally found the enhancement allegation contained in the indictment to be true and sentenced Brigham to two concurrent terms of forty years' imprisonment.

This appeal followed.

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<sup>1</sup> The same complainant was named in each count of the indictment.

<sup>2</sup> The judgments of conviction for both Count I and Count II indicate the Penal Code provision of the offenses for which Brigham was convicted is "22.021(A)(1)(A)."

## SUFFICIENCY OF THE EVIDENCE<sup>3</sup>

### Standard of Review

In reviewing the legal sufficiency of the evidence, we consider all of the evidence in the light most favorable to the verdict to determine whether any rational factfinder could have found the essential elements of the offense beyond a reasonable doubt. *Cary v. State*, 507 S.W.3d 750, 757 (Tex. Crim. App. 2016) (citing *Jackson v. Virginia*, 443 U.S. 307, 318–19 (1979)). The applicable standard of review requires us to resolve any evidentiary inconsistencies in favor of the verdict, keeping in mind that the factfinder is the exclusive judge of the facts and the credibility of the witnesses, and shall determine the weight to give witnesses’ testimony. *Cary*, 507 S.W.3d at 757. Further, in a bench trial, the trial court is the sole trier of fact and judge of the credibility of the witnesses, and the trial court may choose to believe or not to believe some or all of the witnesses who testify at trial. *See Johnson v. State*, 571 S.W.2d 170, 173 (Tex. Crim. App. 1978). “When the record supports conflicting inferences, we presume that the [factfinder] resolved the conflicts in favor of the verdict and defer to that determination.” *See Merritt v. State*, 368 S.W.3d 516, 525–26 (Tex. Crim. App. 2012).

### Applicable Law

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 the person’s consent, or if he causes the penetration of another person’s mouth with his sexual organ without consent. TEX. PEN. CODE ANN § 22.021(a)(1)(A)(i)–(ii). Additionally, he must cause serious

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<sup>3</sup> In his brief, Brigham challenges the factual and legal sufficiency of the evidence. However, the Texas Court of Criminal Appeals abolished factual-sufficiency review. *See Brooks v. State*, 323 S.W.3d 893, 894–95 (Tex. Crim. App. 2010) (plurality op.); *id.* at 926 (Cochran, J., concurring); *see also Howard v. State*, 333 S.W.3d 137, 138 n.2 (Tex. Crim. App. 2011); *Mayberry v. State*, 351 S.W.3d 507, 509 (Tex. App.—San Antonio 2011, pet. ref’d). Accordingly, we address only whether the evidence presented at trial was legally sufficient to support Brigham’s conviction.

bodily injury, attempt to cause a death during the course of the same criminal episode, or use or exhibit a deadly weapon in the course of the same criminal episode. *See id.* § 22.021(a)(2)(A)(i), (iv). In the alternative, a person commits the offense if he “acts in concert with another who engages in ... [the penetration of the anus, sexual organ, or mouth] ... directed toward the same victim and occurring during the course of the same criminal episode.” *Id.* § 22.021(a)(2)(A)(v).

## **Application**

### ***The Evidence Presented at Trial***

Because Brigham only challenges the sufficiency of the evidence supporting the aggravated sexual assault convictions, we outline the evidence necessary to complete that review.

On December 12, 2015, the complainant, who advertised massages on various websites, received a text message asking if she was available to give a massage. Once the complainant established the length of the massage the prospective client wanted, she requested the client’s location. The complainant drove to the address given by the prospective client, arriving around 9 p.m. The complainant testified she took her purse with her when she left the car, a black 2013 Chevrolet Camaro. Her purse held a wallet containing her driver’s license, approximately \$900.00 cash, and her debit, credit, and social security cards. The complainant’s car and house keys were also in her purse.

The complainant testified that when she arrived at the apartment complex at the given address, she called the phone number from which she received the original text message because she was unsure of the exact location of the prospective client’s apartment. A man opened an apartment door and directed her into an apartment. The complainant followed the man into the apartment, and, once she was inside, someone struck her from behind hard enough that she fell to the floor, dropping everything she held. A second man held a gun to the complainant’s head and

warned her that if she screamed, he would shoot. One of the men gagged the complainant by placing something in her mouth and she was ordered to close her eyes and keep them closed.

The complainant testified she was taken into a different room and forced to her knees. The gag was removed from her mouth and she was forced to perform oral sex on one of the men. The complainant testified the man did not wear a condom and did not ejaculate. When the first man removed his penis from her mouth, the complainant was told again to keep her eyes closed. Her clothes were removed and she was ordered to straddle the now-sitting man and sit on his penis. The complainant testified the man wore a condom and he “forced [her] to put his penis in [her] vagina.” The complainant further testified the man “told me to act like I like it, that I better act like I like it.”

The complainant was then forced to her knees and the man assaulting her penetrated her anally. The complainant testified that both men penetrated her orally and anally and that only one man penetrated her vaginally. The complainant affirmed that she did not consent to any of the actions and that she did not consent to having sex with Brigham. The complainant also testified that, as she was being assaulted, she heard one of the men search through her purse and announce how much money he found.

One of the men warned the complainant that “he had all of [her] information” and both men warned her not to contact police. The men placed the complainant in a closet with her hands still bound, and the complainant heard the men discussing cleaning up before they left. The complainant testified she did not open her eyes or leave the closet until she was confident the men were gone. Eventually, the complainant left the closet and realized her purse and its contents, including her car key, were gone. The complainant “figured [the men] had taken [her] car.” The complainant sought help at another apartment. Araceli, a visitor at a nearby apartment, testified that when the complainant knocked on the door, she looked out a window and saw the complainant.

Araceli testified the complainant was naked except for a jacket, “[h]er hands were tied behind her back,” and there was feces on her jacket and hands. Araceli described the complainant as scared and “shooken up.” James, the apartment’s resident, testified the complainant explained to him and Araceli that she had been raped and her car had been stolen. Araceli called 9-1-1.

Officer Cody Haegelin with the San Antonio Police Department (“SAPD”) was the first officer to respond to the scene. Officer Haegelin testified the complainant’s hands were bound and she was shaking. Officer Haegelin cut the shoestring, obtained a basic description of the men who assaulted the complainant, and discovered the complainant’s vehicle was missing. SAPD Officer Hector Figueroa also responded to the scene and later escorted the complainant to Specialty and Transplant Hospital for an examination with a Sexual Assault Nurse Examiner (“SANE”).

SAPD Detective Robert Valadez presented the complainant with two photo identification lineups. The complainant did not recognize any of the men pictured in the first lineup, but recognized one of the photos in the second lineup as one of the men who assaulted her. During her testimony, the complainant acknowledged she was 90% certain at the time of the second photo lineup that the man she identified was one of her assailants. Detective Valadez testified the photo identified by the complainant was that of Brigham. Brigham’s photo was not included in the first lineup. Detective Valadez described how the complainant began crying upon seeing Brigham’s photo in the second lineup.

Detective Valadez testified that when he interviewed Brigham, he showed Brigham a picture of the complainant. According to Detective Valadez, Brigham stated he had sex with the complainant. Brigham told Detective Valadez that he met up with his cousin Stephen Wansley and went into a hotel room where a friend named Trent was having sex with the complainant. Brigham stated he had sex with the complainant after Trent and described the complainant as “the girl with the tattoos, piercings, and the Camaro.”

SAPD Investigator Joe Rodriguez testified he was dispatched to recover a stolen vehicle – a 2013 black Chevrolet Camaro – identified as the complainant’s vehicle. SAPD Detective Duane Vargas, the lead detective on the case, testified the Camaro was recovered from a parking lot near Brigham’s apartment. On cross-examination, Detective Vargas acknowledged that the parking lot in which officers located the Camaro was the parking lot of Wansley’s apartment complex. Detective Vargas also acknowledged that there were no DNA matches to Brigham from the collected evidence.

### ***Discussion***

Brigham contends “[t]he State introduced insufficient evidence that [he] intentionally or knowingly penetrated [the complainant] without her consent, or with violence, or with a deadly weapon.”

Generally, the testimony of a victim, standing alone, is sufficient to support a conviction for sexual assault. *Beltran v. State*, 517 S.W.3d 243, 250 (Tex. App.—San Antonio 2017, no pet.); *see Garcia v. State*, 563 S.W.2d 925, 928 (Tex. Crim. App. [Panel Op.] 1978) (the testimony of a complainant regarding a sexual offense, standing alone, was sufficient); *see also* TEX. CODE CRIM. PROC. ANN. art. 38.07(a). Here, the victim was able to provide testimony to establish the statutory elements.

The complainant identified Brigham as one of the men who assaulted her in a photo lineup and in court during her testimony. The complainant testified she was hit from behind, gagged, and bound. The complainant also related that a gun was held to her head and that she was verbally threatened. Additionally, the complainant testified the men both warned her not to contact the police, both men discussed cleaning the scene, and one man went through her purse and announced to the other man how much money was found as the other man sexually assaulted her. *See Arredondo v. State*, 270 S.W.3d 676, 679-80 (Tex. App.—Eastland 2008, no pet.) (noting that “in

concert" is not defined in the statute but concluding that "two or more individuals act in concert if their conduct is preplanned or if they act conjunctively to achieve a common purpose"). The complainant also testified that both of the men who assaulted her penetrated her both orally and anally. *Garcia*, 563 S.W.2d at 928 (the complainant's testimony was sufficient evidence of penetration). Finally, the complainant testified she did not consent to engaging in sexual intercourse with Brigham. *Wilson v. State*, 473 S.W.3d 889, 899 (Tex. App.—Houston [14th Dist.] 2015, pet. ref'd) (a "complainant's testimony that she did not consent to engaging in sexual intercourse with appellant is sufficient, by itself, to establish a lack of consent").

Viewing the evidence in the light most favorable to the verdict, we conclude that a rational trier of fact could have found beyond a reasonable doubt that Brigham sexually assaulted the complainant and that he acted in concert with another in commission of the crime. Brigham's sole issue on appeal is overruled.

### **CONCLUSION**

Based upon the foregoing reasons, we affirm the judgment of the trial court.

Irene Rios, Justice

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