

**In The**  
***Court of Appeals***  
***Ninth District of Texas at Beaumont***

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**NO. 09-09-00184-CR**

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**JAMES B. CHISEM III, Appellant**

**V.**

**THE STATE OF TEXAS, Appellee**

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**On Appeal from the 260th District Court**  
**Orange County, Texas**  
**Trial Cause No. D-080582-R**

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**MEMORANDUM OPINION**

A jury convicted James B. Chisem III<sup>1</sup> of aggravated sexual assault and assessed punishment at fifty years in prison. *See* Tex. Penal Code Ann. § 22.021(a) (West Supp. 2010).<sup>2</sup> Appellant argues the evidence is legally and factually insufficient to support his conviction. He also contends that the fact that the “State knew or should have known”

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<sup>1</sup>Some documents in the record refer to appellant as James B. Chisen, III.

<sup>2</sup>Because section 22.021(a), as applied to Chisem, has not materially changed since the date of the offense, we cite to the current version of the statute.

that the State's witnesses "were in fact prostitutes[,]" although they testified otherwise at trial, resulted in a violation of his due process rights.

The evidence is sufficient to support the conviction. The record does not support Chisem's due process argument. We therefore affirm the trial court's judgment.

#### SUFFICIENCY OF THE EVIDENCE

Chisem argues the evidence is insufficient to support his conviction. In a sufficiency review, an appellate court considers all the evidence in the light most favorable to the verdict to determine whether any rational trier of fact could have found the essential elements of the offense beyond a reasonable doubt. *Hooper v. State*, 214 S.W.3d 9, 13 (Tex. Crim. App. 2007) (citing *Jackson v. Virginia*, 443 U.S. 307, 318-19, 99 S.Ct. 2781, 61 L.Ed.2d 560 (1979)). Under the *Jackson* standard, the reviewing court gives full deference to the jury's responsibility to fairly resolve conflicts in the testimony, to weigh the evidence, and to draw reasonable inferences from basic facts to ultimate facts. *Hooper*, 214 S.W.3d at 13.<sup>3</sup>

A person commits aggravated sexual assault if the person intentionally or knowingly "causes the penetration of the mouth of another person by the sexual organ of the actor, without that person's consent[,]" and the actor uses or exhibits a deadly weapon

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<sup>3</sup>"[T]he *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." *Brooks v. State*, No. PD-0210-09, slip. op. ¶ 1 (Tex. Crim. App. Oct. 6, 2010), available at <http://www.cca.courts.state.tx.us/OPINIONS/HTML/OPINIONINFO.ASP?OPINIONID=20190> (overruling *Clewis v. State*, 922 S.W.2d. 126 (Tex. Crim. App. 1966)).

in the course of the same criminal episode. Tex. Penal Code Ann. § 22.021(a)(1)(A)(ii), (2)(A)(iv) (West Supp. 2010). Chisem claims that the complainant was a prostitute and that she consented, and that he pulled his knife when she would not return the crack cocaine that Chisem had given her. Chisem admitted lying to the police when he was questioned about his involvement with the complainant and the other witnesses that testified.

The jury also heard the testimony of the complainant who testified to the aggravated sexual assault, and heard the testimony of others who reported Chisem sexually assaulted them. The jury heard testimony about what happened that night, about the pattern of assaults, about the green vehicle, and about where the assaults occurred. The jury heard how the complainant reacted when she got home.

The jury determines the weight to give the testimony of witnesses, and the determination may turn on an evaluation of credibility. *Cain v. State*, 958 S.W.2d 404, 408-10 (Tex. Crim. App. 1997). The jury believed the complainant. The evidence is sufficient to support the jury's verdict. Issue one is overruled.

#### DUE PROCESS

Chisem maintains his due process rights were violated because the State's witnesses testified that they were not prostitutes when the State knew or should have known that they were prostitutes. Chisem argues that if these witnesses were prostitutes, it makes his testimony more credible.

Chisem testified the witnesses were prostitutes. All three women denied being prostitutes. Two of the three witnesses testified they were walking at the time Chisem approached them because they had no transportation, and the other testified she was walking because she had just returned a bicycle to a friend. None of the women testified that they had any convictions for prostitution and no prostitution convictions for these witnesses were introduced into evidence. A police officer testified that some of Chisem's victims were prostitutes, but she did not state that the testifying witnesses were prostitutes. One officer testified she knew the complainant "relatively well" and that she was not aware that the complainant had ever prostituted herself for crack cocaine or money. As for Chisem's contention that his counsel knew one of the witnesses was a prostitute based on his former representation of her, the witness waived her privilege of attorney-client confidentiality when she testified, and she denied being a prostitute or ever telling defense counsel that she was a prostitute. While the jury heard conflicting evidence, and may have chosen to accept as credible or reject as incredible some or all of any witness's testimony, the record presented does not support Chisem's argument. We overrule appellant's second issue. The judgment is affirmed.

AFFIRMED.

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DAVID GAULTNEY  
Justice

Submitted on September 7, 2010  
Opinion Delivered October 13, 2010  
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Before Gaultney, Kreger, and Horton, JJ.