

No. 01-24-00715-CR

FILED IN
1st COURT OF APPEALS
HOUSTON, TEXAS
IN THE FIRST COURT OF APPEALS
5/28/2025 3:52:35 PM
at HOUSTON
DEBORAH M. YOUNG
Clerk of The Court

THOMAS JOSEPH RADFORD, Jr.,

Appellant

vs.

THE STATE OF TEXAS,

Appellee

Appeal from the District Court of Brazoria County, Texas
300th Judicial District (94639-CR)

BRIEF FOR THE APPELLANT

Dominic J. Merino
403 Laurel Dr., Ste. D
Friendswood, Texas 77546
D.merinolaw@gmail.com
(281) 585-5654

Attorney for Appellant,
Thomas Joseph Radford, Jr.

IDENTITY OF PARTIES AND COUNSEL

Pursuant to Texas Rule of Appellate Procedure 38.1(a), the following is a complete list of all parties to the trial court's judgment and the names and addresses of all trial and appellate counsel:

Appellant

Thomas Joseph Radford, Jr.

Appellant's appellate counsel

Dominic J. Merino Attorney at Law
403 Laurel Dr., Ste. D
Friendswood, Texas 77546

Appellant's trial counsel

Crespin Linton
SBN: 12392850
440 Louisiana, Ste. 900
Houston, Texas 77002

Appellee

State of Texas

Appellee's appellate/trial counsel

Thomas Selleck, District Attorney
Brazoria County Crim. Dist. Attorney's Office
237 E. Locust St., Ste. 305
Angleton, Texas 77515

Cierra Abernathy, A.D.A.
Brazoria County Crim. Dist. Attorney's Office
237 E. Locust St., Ste. 305
Angleton, Texas 77515

TABLE OF CONTENTS

Identity of Parties and Counsel	2
Table of Contents	3
Index of Authorities.....	4
Statement of the Case	5
Issue Presented	6
Statement of Facts	7
Summary of the Argument	13
Argument	14
Prayer	19
Certificate of Service	20
Certificate of Compliance	21

INDEX OF AUTHORITIES

CASES:

PAGE(S):

<u>Jackson v. Virginia</u> , 443 U.S. 307, 319 (1979).....	14
<u>Tibbs v. Florida</u> , 467 U.S. 32, 41-42 (1982).....	13
<u>Brooks v. State</u> , 323 S.W. 3d 893, 899 (Tex. Crim. App. 2010).....	14
<u>Collier v. State</u> , 999 S.W.2d 779, 787 (Tex. Crim. App. 1999).....	15
<u>Clewis v. State</u> , 922 S.W. 2d 126, 133 (Tex. Crim. App. 1996).....	13
<u>Flanary v. State</u> , 316 S.W.2d 897, 898 (Tex. Crim. App. 1958)(op. on reh'g).....	15
<u>Hooper v. State</u> , 214 S.W. 3d 9, 16-17 (Tex. Crim. App. 2007).....	14
<u>Marin v. State</u> , 851 S.W.2d 275, 279-80 (Tex. Crim. App. 1993).....	15
<u>Winfrey v. State</u> , 393 S.W. 3d 763, 770 (Tex. Crim. App. 2013).....	14, 17
<u>Trevino v. State</u> , 228 S.W. 3d 729, 736 (Tex. App.-Corpus Christi 2006, pet. ref'd)...	17

STATUTES/RULES:

Tex. Code Crim. Proc. § 22.011.....	5, 6, 16
Tex. R. App. P. 33.1(a).....	15

STATEMENT OF THE CASE

This is a direct appeal from a jury verdict finding Appellant guilty of sexual assault. (Tex. Penal Code sec. 22.011). Appellant was charged by indictment with said offense. (C.R. 6). Voir Dire commenced on September 9, 2024. (RR 3:1) The next day the jury returned a guilty verdict. (RR 4:120). On September 11, 2024 the jury sentenced Appellant to eleven (11) years' confinement in the Texas Department of Criminal Justice-Institutional Division. (RR 5:40). Written judgment was entered on September 19, 2024. (CR:120), and a *sua sponte* "Nunc Pro Tunc Judgment of Conviction by Jury" entered on October 30, 2024. (CR:125).

Appellant filed a *pro se* Notice of Appeal on September 11, 2024. (CR: 113). Counsel for Appellant filed a Motion for New Trial on September 30, 2024. (CR: 123) that was overruled by operation of law.

ISSUE PRESENTED

Issue: Whether the evidence presented at trial was legally sufficient to support the conviction for sexual assault under Texas Penal Code § 22.011.

STATEMENT OF FACTS

In the evening on December 16, 2021 Officer Robert Pruett of the Lake Jackson Police Department (“Pruett”) responded to a report of a sexual assault at 103 Moss Street, Lake Jackson, Texas. At the time, Pruett was working the night shift from 6:00 p.m. to 6:00 a.m.. (RR 4: 8-9). Pruett was the first officer on the scene. (RR:4: 10-11). Upon arrival he observed a female, later identified as Rachel Stanford (“Stanford”), sitting alone in the driveway in front of the garage door. It was nighttime. Stanford was crying and visibly distraught. (RR 4:11-12). Pruett was wearing a body-worn camera that recorded his interactions at the scene. (RR 4:13; St. Ex.3). The camera was mounted on his chest, providing a direct view of events as they unfolded. (RR 4: 15). When Pruett contacted Stanford she informed him that the purported offender was inside the residence. (RR 4:13. Pruett focused on securing the scene and did not conduct detailed interviews at that time. He also took photographs of the garage area as part of his documentation. (RR: 4: 14). On cross-examination Pruett acknowledged that he did not personally witness Appellant commit any act of sexual assault against Ms. Stanford. (RR4:15).

The state’s next witness was Bruce Hollis. (“Hollis”). Bruce Hollis is also known as Kevin Hollis (“Hollis”). (RR 4:66-67). Hollis testified that the garage door and back door were open during the day due to the warm weather, (RR 4:32). At some point in the early afternoon, Appellant, whom Hollis identified as the defendant, came over (RR 4:32-33). Rachel was still present in the garage at the time, and Appellant, Hollis and Stanford continued to sit in the garage, listen to music and

converse. (RR 4:33). Hollis noted that Stanford appeared intoxicated and not her usual lively self, which he attributed to fatigue, intoxication, or both. (RR 4:34). Hollis observed that her speech was impaired and noted she was dozing throughout the day, both before and after Appellant's arrival. (RR 4:34-35). Hollis believed that Stanford may have taken Xanax, possibly provided by Appellant from a backpack, though he could not recall stating this specifically to the police. (RR 4:35). After taking the drugs, Stanford's demeanor initially improved but then she began dozing again, and Hollis noted she never moved from her chair, not even to use the bathroom. (RR 4:35-36). Hollis testified that he eventually went inside the house to eat pizza with his mother, remaining inside for approximately 20 to 30 minutes. (RR 4:37). Hollis testified that during the time he was in the house eating with his mother, Radford remained in the garage with Stanford. (RR 4:36). When Hollis returned to the garage the lights were off, so he turned them back on, Stanford then asked for some pizza, which he went inside to heat up. (RR 4:37-38). Hollis testified that during the time he was inside the house Radford remained in the garage with Stanford. (RR 4:36). Hollis recalled seeing Radford touching Rachel's leg and confronting him, saying "that wasn't cool." (RR 4:36). Hollis stated that he originally thought Appellant was trying to wake Stanford up, but still found the conduct inappropriate, especially given Stanford's condition at the time. (RR 4:36). Hollis affirmed that Stanford remained incoherent throughout the evening and was visibly very intoxicated. (RR 4:37). He did not recall Stanford ever going inside the house. (RR 4:39). On cross-examination, Hollis acknowledged he had been drinking that

day but denied using Xanax or marijuana. (RR 4:39).

Stanford testified at trial that she knew the defendant, Thomas Radford, and identified him in court. (RR 4:53-54). When asked what the defendant [appellant] had done to her, Stanford responded, “He raped me.” (RR 4:53). Stanford testified in December 2021 she was feeling suicidal and had taken some Xanax. She stated that she called Appellant, told him how she was feeling, and he invited her to come to Dana and Kevin’s house, promising to give her more Xanax. (RR 4:54-55). She testified that she walked to the house, located at the corner of “Chestnut and another street” in Lake Jackson, Texas. (RR 4:55-57). Upon arriving at the garage of the house, Stanford testified that Appellant and Kevin were present. (RR 4:58). Stanford stated that Appellant gave her more Xanax as soon as she arrived, which she took while sitting in a chair in the garage. (RR 4:59-60). Stanford stated that after taking the pills she began crying and eventually passed out. (RR 4:60). Stanford recalled waking up to find that Appellant had pulled her to the end of the chair, was holding her legs in the air, and was having sex with her. (RR 4:61-62). Stanford testified that she saw and felt him during the assault, and that when he realized she was awake, he backed away, pulled up his pants, and acted as if nothing had happened. (RR 4:61-62). Stanford stated that when she woke her shirt was still on but her shorts had been pulled down. (RR 4:63). Stanford testified that immediately afterward she called her boyfriend and her son, then waited for her boyfriend to arrive before walking outside to call 911. (RR 4:63). Stanford said the police found her sitting on the driveway a few minutes later. (RR 4:64). Stanford further testified that she was

taken to the hospital for a sexual assault examination, but the exam was not completed because the detective repeatedly asked about her boyfriend, Johnny, assaulting Appellant. (RR 4:65). She was afraid Johnny would get in trouble and also feared being arrested for drug use. (RR 4:65). Stanford affirmed that she did not ask Appellant to have sex, did not want to have sex with him, and never consented to having sex with him. (RR 4:65). Stanford denied fabricating the allegations to avoid conflict with her boyfriend. (RR 4: 75-76).

During the cross-examination of Stanford several key aspects of her credibility and the circumstances surrounding the incident were brought to light. Stanford acknowledged that she was under felony indictment in Brazoria County for possession of a controlled substance at the time of her testimony. (RR 4:66). Stanford admitted to previously selling methamphetamine to Appellant, stating, “that’s how I know him.” (RR 4:66). Stanford testified that on the day of the incident she walked over to Hollis’s house and spent time in his garage. She admitted to taking pills provided by Appellant and passing out, rendering her unaware of the duration of time she spent there or specific events that transpired. (RR 4:67). Stanford stated that she contacted Appellant prior to going to the Hollis residence to request Xanax because she was attempting to commit suicide. (RR 4:68-69). She said Appellant brought the pills to her at the garage. (RR 4:69). Significantly, Stanford testified that she had a previous incident with Appellant in which she suspected than he may have sexually assaulted her while she was unconscious. She told investigators that she believed Appellant had raped her months before, though she stated during

cross-examination “I wasn’t a hundred percent sure and that’s why I didn’t say anything.” (RR 4:70-71). Despite this prior suspicion, Stanford acknowledged continuing contact with Appellant, including asking him to bring her drugs. She maintained that she never allowed herself to be alone with him after the prior incident. (RR 4:71). When asked why she would continue to contact someone she suspected had previously raped her she explained that she only interacted with Appellant to obtain drugs. (RR 4:71). Stanford testified that following the alleged assault, she texted her boyfriend, Johnny Soria (“Soria”), who came over to the Hollis residence. (RR 4:72). She testified that she told Soria to “come over here and beat him up for what he had done to me.” (RR 4:72). Stanford denied any consensual relationship with Appellant and asserted that he raped her while she was unconscious, stating “He raped me when I was unconscious, and it was not wanted, ever. (RR 4:73). When confronted with the suggestion from defense counsel, Stanford denied fabricating the rape allegation to avoid conflict with her boyfriend.

Lake Jackson Police Department Detective Jason Knopp (“Det. Knopp”) was assigned to the case. (RR 4: 78). Knopp was dispatched to the scene at approximately 8:30 p..m. Upon arrival, he conferred with responding officers and was informed of the incident. He subsequently contacted the suspect, Thomas Radford. (RR 4:79-80). Stanford had already been transported to CHI St. Luke’s Hospital for evaluation and a Sexual Assault Nurse Examiner (SANE) exam, which Knopp stated was standard procedure in such cases. (RR 4:80). The SANE exam was not completed due to Stanford leaving the hospital. (RR 4:74). Det. Knopp

identified the crime scene based on officer input and visual inspection. (RR 4:79-80 2: St. Ex. 4). Following the crime scene investigation Det. Knopp interviewed the victim at the hospital and later conducted a recorded interview with Appellant at the Lake Jackson Police Department. (RR 4:80-81). Appellant was transported by law enforcement to the police department but appeared voluntarily and was not under arrest. (RR 4:81). The interview took place around 10:00 p.m. that same night, was recorded and admitted into evidence without objection. (RR 4:82-83 2: State's Ex. 5). During the two-hour interview, Appellant remained cooperative and provided consistent statements. Det. Knopp testified that Appellant's description of events did not materially change throughout the duration of the interview. (RR 4:84). When asked whether the victim responded or participated in the sexual act, Appellant stated only that "she was awake" and "she enjoyed it." (RR 4:84). Based on his interviews of Stanford, Radford and Hollis, Det. Knopp determined that all accounts corroborated the assertion that Stanford was asleep when the sexual contact began. (RR 4:84).

During cross-examination Det. Knopp confirmed that Appellant voluntarily consented to the interview, could have declined to answer questions, and was told he could leave at any time. (RR 4: 85-86). Despite this, Appellant answered questions for nearly two hours. (RR 4:86). Det. Knopp further testified that although Stanford mentioned the possibility of photographs being taken, Appellant and Hollis both denied it. Detective Knopp acknowledged that he did not examine Hollis' phone to verify the claim and stated that he believed Hollis's denial. (RR 4: 87).

SUMMARY OF THE ARGUMENT

Issue: There is legally insufficient evidence of guilt to support the jury's verdict.

Although the complainant's testimony may have been sufficient to raise suspicion or concern the evidence adduced at trial was legally insufficient to prove beyond a reasonable doubt that Appellant committed sexual assault. The complainant's memory was substantially impaired, she had no recollection of the events leading up to the alleged assault, and she was unable to describe key moments with clarity due to gaps in memory. This lack of evidence of nonconsensual initiation, and the absence of proof that the Appellant knew the complainant was incapable of consenting render the evidence legally insufficient. A rational jury could not exclude reasonable doubt as to the defendant's knowledge or intent. Thus, the conviction must be reversed and an acquittal entered. Tibbs v. Florida, 467 U.S. 32, 41-42 (1982); Clewis v. State, 922 S.W. 2d 126, 133 (Tex. Crim. App. 1996).

ARGUMENT

1. Standard of Review

When reviewing a claim of legal insufficiency, the reviewing court must determine whether, after viewing the evidence in the light most favorable to the verdict, any rational trier of fact could have found the essential elements of the offense beyond a reasonable doubt. Jackson v. Virginia, 443 U.S. 307, 319 (1979); Brooks v. State, 323 S.W. 3d 893, 899 (Tex. Crim. App. 2010). The standard gives deference to the jury's findings but does not allow verdicts based on speculation or conjecture. Hooper v. State, 214 S.W. 3d 9, 16-17 (Tex. Crim. App. 2007); Winfrey v. State, 393 S.W. 3d 763, 770 (Tex. Crim. App. 2013).

2. Preservation of Error

To preserve a complaint for appellate review, a party must generally have presented to the trial court a timely request, objection, or motion that states the specific grounds for the desired ruling, if they are not apparent from the context of the request, objection, or motion. *See Tex. R. App. P. 33.1(a)*. However, it has long been the rule in Texas that a criminal appellant may challenge the legal sufficiency of the State's evidence even though the issue was not raised in the trial court. *See Flanary v. State*, 316 S.W.2d 897, 898 (Tex. Crim. App. 1958)(op. on reh'g); *see also Collier v. State*, 999 S.W.2d 779, 787 (Tex. Crim. App. 1999)(Keller, J., dissenting) ("procedural default concepts are generally absent from evidentiary sufficiency issues as they relate to elements of an offense"). In other words, the State's burden to present evidence sufficient to sustain a conviction has been considered an absolute requirement that must be observed without request and cannot be waived or forfeited. *See Marin v. State*, 851 S.W.2d 275, 279-80 (Tex. Crim. App. 1993)(absolute, waivable, and forfeitable rights).

3. Legal Insufficiency Argument

(A). Complainant's Testimony Failed to Establish All Elements of the Offense

The complainant, Rachel Stanford's testimony failed to establish all elements of the offense. Under Texas Penal Code § 22.011 (a)(1)(A), a person commits sexual assault if he intentionally or knowingly causes the penetration of the sexual organ of another without that person's consent. Consent is lacking when the complainant is unconscious or physically unable to resist, and the actor knows that. Texas Penal Code § 22.011 (b)(3).

The Complainant testified that upon arriving at the garage, the Appellant gave her Xanax. She recalled taking the pills, crying, and then blacking out:

“I remember sitting there. I remember taking the pills. I remember crying. And then I – next thing I know, I woke up.” (RR 4:59-60).

When complainant awoke, she stated that the Appellant was having sex with her. She recalled:

“He had me pulled up where my butt was hanging off the chair, and he had my legs in the air.” (RR 4:62).

However, she admitted having no memory of how the sexual conduct began or what occurred during the time she was unconscious or blacked out. Though she later stated she did not consent when asked whether she did or not by the prosecutor. (RR 4:36-37). The complainant's significant memory lapses and foggy recollection cannot support the conclusion that the Appellant acted with knowledge of her incapacity.

B. Witness Testimony Fails to Establish Knowing Assault

The state relied on the testimony from Hollis, who observed Rachel and the Appellant in the garage, Hollis stated Rachel was:

“Kind of nodding in and out... she wasn’t the normal Rachel...

She seemed very intoxicated,” (RR 4:36-37)

Hollis also testified that he saw Appellant touch Rachel (complainant):

“I thought then... it was just... trying to wake her up...But that wasn’t cool, no” (RR 4:36).

Although this confirms her impaired state, it does not prove that Appellant knew she was unconscious or incapable of consent at the time of intercourse. Furthermore, Hollis left the garage for approximately twenty to thirty minutes to eat, leaving a critical evidentiary gap as to what occurred in that crucial time frame. (RR 4:37).

C. The Evidence Required Improper Inference Stacking

There is no direct evidence of the Appellant’s mental state or conduct during the relevant period. Instead, the State’s theory required jurors to infer that sexual intercourse occurred while complainant was unconscious, and that Appellant knew of her unconsciousness, and that complainant did not consent. This kind of inferential stacking is not permitted. Winfrey v. State, 393 S.W. 3d at 770; Trevino v. State, 228 S.W. 3d 729, 736 (Tex. App.-Corpus Christi 2006, pet. ref’d).

D. Conclusion

The state failed to present legally sufficient evidence that the Appellant committed sexual assault with the requisite knowledge of non-consent. The complainant's fragmented memory, coupled with vague witness observations, did not establish guilt beyond a reasonable doubt.

Appellant respectfully requests this Court reverse the conviction and render a judgment of acquittal.

PRAYER

WHEREFORE, premises considered, appellate counsel respectfully requests that this case be reversed and a judgment of acquittal entered.

Respectfully Submitted,

/s/ Dominic J. Merino

By: _____

Dominic John Merino
Texas Bar Number 00797069

403 Laurel Dr., Ste. D
Friendswood, Texas 77546
d.merinolaw@gmail.com
(281) 585-5654

Attorney for Appellant,
Thomas Radford, Jr.

CERTIFICATE OF SERVICE

This is to certify pursuant to Texas Rule of Appellate Procedure 9.5(a) that on the 28th day of May, 2025, I served a true and correct copy of the foregoing electronically filed document on the party or attorney on file with the electronic filing manager and that the electronic transmission was reported as complete.

/s/ Dominic J. Merino

Dominic John Merino

CERTIFICATE OF COMPLIANCE

Pursuant to Texas Rule of Appellate Procedure 9.4, the undersigned counsel certifies that, exclusive of the exempted portions in Texas Rule of Appellate Procedure 9.4(i)(1), this brief contains 3,357 words (less than 15,000), based upon the word count of the WordPerfect program used to prepare the document.

/s/ Dominic J. Merino

Dominic John Merino

Automated Certificate of eService

This automated certificate of service was created by the efiling system. The filer served this document via email generated by the efiling system on the date and to the persons listed below. The rules governing certificates of service have not changed. Filers must still provide a certificate of service that complies with all applicable rules.

Dominic Merino
Bar No. 797069
D.MerinoLaw@gmail.com
Envelope ID: 101347042

Filing Code Description: Brief Not Requesting Oral Argument
Filing Description: Appellant's Brief
Status as of 5/28/2025 4:01 PM CST

Associated Case Party: Brazoria County Criminal District Attorney's office

Name	BarNumber	Email	TimestampSubmitted	Status
Tom Selleck		bcdaeservice@brazoria-county.com	5/28/2025 3:52:35 PM	SENT