

**Appeal No. 14-24-00467-CR**

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**In The Fourteenth Court of Appeals**

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14th COURT OF APPEALS  
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DEBORAH M. YOUNG  
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**PATRICK KENT BAUGH, Appellant**

**Vs.**

**THE STATE OF TEXAS, Appellee.**

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**On Appeal from the 149th Judicial District Court  
of Brazoria County, Texas  
Cause Number 100943-CR.**

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**BRIEF FOR APPELLANT  
PATRICK KENT BAUGH**

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Oral Argument Requested

**Cary M. Faden**  
54 Sugar Creek Center Blvd., Suite 200  
Sugar Land, Texas 77478  
Telephone: (281) 491-6182  
Facsimile: (281) 491-0049  
Texas Bar No. 06768725  
**E-MAIL: [caryfaden@aol.com](mailto:caryfaden@aol.com)**  
Attorney for Appellant

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## IDENTITY OF PARTIES AND COUNSEL

Pursuant to Tex. R. App. P., Rule 38.1(a), appellant certifies that the following is a complete list of the parties to the final judgment and the names and addresses of counsel in the trial and on appeal:

### Appellant:

Patrick Kent Baugh

### Counsel for Appellant:

Paul Kendall (trial)  
11200 Broadway Street, Suite 2743  
Pearland, Texas 77584-9787

Cary M. Faden  
(on appeal)  
54 Sugar Creek Center Blvd., Suite 200  
Sugar Land, Texas 77478

### Counsel for the State of Texas:

Tom Selleck  
Brazoria County, Texas  
District Attorney  
111 E. Locust Street  
Angleton, Texas 77515

### Trial Judge:

Jessica Pulcher

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**PATRICK KENT BAUGH, Appellant**

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**BRIEF FOR APPELLANT**  
**PATRICK KENT BAUGH**

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To The Honorable Justices of the Fourteenth Court of Appeals:

Comes now appellant, Patrick Kent Baugh, by and through his attorney of record, Cary M. Faden, and files this his brief to set aside the May 24, 2024, judgment of the 149th Judicial District Court of Brazoria County, Texas in Cause Numbers 100943-CR, and would respectfully show the Court:

## STATEMENT OF THE CASE

On May 2, 2024, Appellant, was indicted for the first degree felony of aggravated kidnapping. (1 CR at 7). The offense was alleged to have occurred on or about August 10, 2023. (1 CR at 7). On May 20, 2024, Appellant pleaded not guilty to the indictment. (2 RR at 6). After a jury trial, the jury assessed Appellant's punishment at confinement in the Texas Department of Criminal Justice-Institutional Division for a period of fifty-five years TDCJ-ID, with \$10,000.00 fine. (1 CR at 114-116). On May 24, 2024, Appellant timely filed his notice of appeal. (1 CR at 120).

**ISSUES PRESENTED**

**POINT OF ERROR ONE**

**THE EVIDENCE ADDUCED AT TRIAL WAS LEGALLY  
INSUFFICIENT TO SUPPORT APPELLANT'S CONVICTION.**

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## STATEMENT OF FACTS

On May 2, 2024, Appellant was indicted in the 149th Judicial District Court in cause number 100943-CR. That indictment alleged that, on or about August 10, 2023, in Brazoria County, Appellant did:

did then and there with the intent to violate or abuse sexually Laura Kelly intentionally or knowingly abduct Laura Kelly, hereafter styled the complainant without her consent so as to interfere substantially with her liberty by moving her from one place to another or confining her with the intent to prevent her liberation, by secreting or holding her in a place where she was not likely to be found;

And the Grand Jurors aforesaid, upon their oaths aforesaid, in said County and State, do further present in and to said Court that **PATRICK KENT BAUGH**, hereinafter styled Defendant, on or about the **10th day of August, 2023**, and before the presentment of this indictment, in said County and State, did then and there with the intent to cause bodily injury to Laura Kelly intentionally or knowingly abduct Laura Kelly, hereafter styled the complainant without her consent so as to interfere substantially with her liberty by moving her from one place to another or confining her with the intent to prevent her liberation, by secreting or holding her in a place where she was not likely to be found;

And the Grand Jurors aforesaid, upon their oaths aforesaid, in said County and State, do further present in and to said Court that **PATRICK KENT BAUGH**, hereinafter styled Defendant, on or about the **10th day of August, 2023**, and before the presentment of this indictment, in said County and State, did then and there with the intent to terrorize Laura Kelly intentionally or knowingly abduct Laura Kelly, hereafter styled the complainant without her consent so as to interfere substantially with her liberty by moving her from one place to another or confining her with the intent to prevent her liberation, by secreting or holding her in a place where she was not likely to be found;

(1 CR at 7).

A venire of approximately one hundred (100) persons, was subjected to voir dire examination. (2 RR at 7-181). The jury of twelve (12) was selected and seated, with no further objection. (2 RR at 200). The jury was sworn. (2 RR at 200). Appellant was arraigned on the indictment and entered a plea of not guilty. (2 RR at 6).

**Moshin Momin:** I'm the store manager for the RoadTrac on 1765. And in this case did you give some video to the police? Yes, I did. And so you originally are the one that gave it to the officers back in August of 2023, correct? Correct. (3 RR at 25-29). No cross examination.

**James Minschew:** I am a Crime Scene Investigator with the Brazoria County Sheriff's Office. I was contacted by dispatch. It was my on-call week and they told me that there had been an aggravated kidnapping and possible sexual assault and I was requested to go assist that scene. That is the contents that were inside the trash bag. And do you know what this content is? It's the female clothing. From who? I believe it is from the victim. Thank you. Do you see any type of markings or staining on the clothing? There's a discoloration on the backside of the skirt towards the bottom. (3 RR at 29-44). Cross examination, So you photographed everything inside the house and then you took some of the things that were inside the house after the search

warrant was served and you placed them -- photographed them individually also, right? Yes. Investigator, was the defendant present at the scene when you were taking these photographs? No. Was his vehicle present at the scene when you were taking the photographs? No. (3 RR at 44-57).

**Chloee Holden:** I used to be a teacher at Shadow Creek and I stopped teaching and I'm in nursing school. So I do subbing part time while I go to nursing school. To testify against Patrick Baugh. I don't know the woman's name, but the incident happened at my house. And do you know the defendant? Yes. How do you know him? So our street is multiple houses. So a lot of my family members grew up on that street. So he's related to my mom's cousin by marriage. So you're related to the defendant through marriage? Yes. So give us a run-through of what happened on August 10th, 2023. So it was around -- between 11:00 p.m. or 12:00 a.m. Everybody in my house was asleep. I had just moved back home from my cousin's house. I switched over to nursing school. So I was sorting out my room, and I was going to wash my face. So our front sink is in our kitchen, which is connected to, like, our front door. So you can see the front door from our kitchen. So I'm washing my face, and I hear a loud bang. I'm thinking it's my grandmother's TV. She watches TV really loud. So I assumed it was her TV. So I continued on. Maybe about 25 seconds later, not even, there was another bang and at that moment I kind of knew it was either like

someone moving around the house, maybe my grandmother fell, and I washed my face. I was under the water washing the soap off my face and there was a loud bang on the front window where I was at. It was a Caucasian woman. She was nude. I was stuck. I was froze for, like, the fight-or-flight moment for a while. Were you scared? I was. I've never been in anything like that before. I froze. I was stuck for, like, ten seconds. I tried to yell for my mom but she didn't wake up. So my Uncle Steven was in the living room. So I ran in there and woke him up and I was like, "There's a woman outside. She's naked. She's in fear. I don't know what to do." What was her appearance? I know you said she was nude; but other than her being nude, what did she appear as? She was Caucasian. She was at least 230, 250, dark blonde-brownish hair, couple tattoos. Oh, she had a dog. That's not her appearance but -- How did she seem to you? You said she seemed she was in fear. Can you elaborate? She was definitely in distress. The energies that she felt, I definitely took it -- she did say in words, "He is trying to kill me." (3 RR at 79-89). Cross examination, nothing that suggested to you that it was anything other than just red marks and scratches and not bruising or anything serious? I didn't see any bruises. Seriousness, to go with her emotion, I assume it came from the situation that she ran away from. But you don't know exactly what that was, right? You're judging based on what her emotional state was at the time? Can you repeat the question? You're basing what -- you are kind of

speculating about what her injuries might have been based on her emotional state. Am I understanding you correctly? No, because I saw scratches. Right, but you don't know where they came from or how she received them? Correct. (3 RR at 89-100).

**Steven Owens:** Are you related to the defendant in some way? He's married to my cousin. Was there an incident that occurred at your home involving the defendant and a naked woman? Yes. And this naked lady was knocking on the door, beating the house and crying and hollering for help and my niece -- she woke my niece up. How did she appear to you physically? Scared. Why do you think he was scared? Because she was crying. What else was she doing? She was saying that he sexually assaulted her. And when you say "he sexually assaulted her," who are you referring to? I'm referring to Mr. Baugh. Were you surprised when the woman said that the defendant had sexually assaulted her? No. Because I've heard it from different people. About other allegations of sexual assault? Yes. And you said you were concerned about the other women in your family? I was concerned about my family. (3 RR at 100-119). Cross examination, I know there's a naked lady outside my house. Okay. And all these other people naked, running around and getting strong-armed, you know about them, too, you just don't know who it was? So your understanding of people is your -- the defendant here will sexually assault women, correct? Right. (3 RR at 119-122).

THE COURT: Okay. I'm going to find that it is relevant in that there has been a defensive theory provided of consent and there has been intent challenged through the opening arguments or -- sorry, opening statements and cross-examination of the witnesses and find that it is relevant and more probative than prejudicial. MR. KENDALL: Judge, we ask for a 403 balancing test. THE COURT: And I have found it to be more probative than prejudicial. Earlier I read an instruction to the jury after Mr. Owens testified. Are you comfortable with that same instruction or do we want a different one? MR. KENDALL: I'm comfortable with the instruction.

**Lorenza Owens:** He's married to my cousin. And y'all's houses are close to each other; is that correct? About two houses down. Two houses down. Okay. And do you know why you are here to testify today? Yes, ma'am. August 10th, you were where? Well, I was at my house. And what happened? My daughter comes running to the back part of the house yelling, "Mom, Mom, some white lady naked is banging on my door, asking for help." She's saying -- yelling, "Help, help. He's going to kill me." So I got out of the bed and ran to the front part of the house. So that's when I saw the lady. How many other times has this happened? About three or four times. And is it -- what were the situations for the other two or three incidents? They're bad. Were they like this, where a naked woman showed up to your door? Most of the time they're either in their undergarments yelling for help or hiding by my truck or

something like that and screaming. And you've called the police before? Yes. This is not the first time. (3 RR at 119-153). Cross examination, And that was a call you made on January 21st of 2023, right? Yes. And then one you made on August 10th of 2023, correct? Correct. And there were a few times in the calls and in your testimony today, though, when you mentioned what --it sounds like many other times that this sort of thing has happened, right? You're not just trying to kind of bolster your testimony, trying to make things worse than you think he is? No, sir. Can you give us another date? I can't recall right now. So under oath you're saying these other occasions occurred and you're testifying to things you absolutely know about despite the fact you haven't given us any detail? Other incidents have occurred. I stand firm on that. (3 RR at 153-168).

**Jeffery Brown:** How long have you been at BCSO for? Almost two years now. She advised he was the one that struck her in the back of the neck with the statue. So we see kind of a slightly different angle but just more pictures you're taking, correct? Yes, sir. I try to take very detailed photos, I guess you could say. I take a lot from different angles. I took photos because the swelling and the discoloration on her face. She stated that she was struck in the face multiple times with a closed hand but in kind of, like, I guess, a swinging motion as if you were doing a closed-hand slap or -- And who did she indicate did that? The same male. (3 RR at 168-186). Cross

examination, you just testified that Mr. Baugh fled the scene. You answered it in the affirmative when Mr. Golden suggested he fled the scene. After I went to the hospital -- she had already advised me that she doesn't have a set home, if that makes sense, no place that she stays regularly. So I advised her after, when I visited her in the hospital to get that statement, that I'd be getting in contact with her, seeing what I could do; but I was never able to make contact with her, even after leaving a voicemail. Did she ever make a written statement for you? Yes, sir. If I remember correctly, she made a voluntary written statement. (3 RR at 186-194).

**Tyler Dartez:** I'm Deputy Dartez with the Brazoria County Sheriff's Office. I gathered information that a woman had arrived at his residence throughout the night begging for help. She was completely nude. (By Mr. Golden) Were you able to see a nude woman? She was covered at the time. And do you recall exactly where she was located at? Yes. She was located next to his residence on a bench. What was your impression of her? She was very nervous, excited and scared. She claimed that she had been kidnapped and sexually assaulted. And what was -- so she had something on her; is that correct? She had a bed sheet. (3 RR at 194-215). Can you tell the jury what the Flock cameras are? So Flock camera system is used as a license-plate reader to read license plates. As the vehicle travels on the public roadway, it reads the license plate and sends it back to the system and tells us exactly where it was at that



time. Did you use Flock that night? I did not. Was Flock used that night? Yes, sir. (4 RR at 5-18). Cross examination, you noted that there were no apparent injuries to Ms. Kelly, correct? Yes, sir. EMS was called because she had reported that she'd been sexually assaulted, right? Yes, sir. And she declined transport to the hospital? Yes, sir. (4 RR at 18-36).

**Laura Kelly:** Where were you when you first met the defendant in this case? At a gas station in La Marque. What were you doing at the gas station in La marque? I was sitting with my dog. All right. And what were you doing as you sat at the gas station? I was smoking a cigarette. Okay. And what was your plan as you hung out at the gas station? So I was smoking a cigarette, sitting with my dog before I went in. And you said you saw the defendant there? Yes. Okay. How did you come to see him? He walked up by me and -- What kind of car did he have? A BMW. Did you think it was a nice car? It was pretty fancy looking. Yes. He went and bought me a beer from inside. Now, let's talk about that for a little bit. Okay? Yes. Do you have a drinking problem? Basically, yes, I do. Working on it. That's good. And how -- were you drunk when this happened? No. I hadn't had anything to drink. So he offered to get you a drink? Yes. Before you got into the car with the defendant, did he say he was going to take you to his house? No. Had he told you that, what would you have done? Not gone. He asked me if I wanted a ride and at first I was like, "No. I have a

dog and you have a really nice car. You don't want my dog in your car," I didn't think. And then I was thinking, it's right down the road and then I -- So you're going to follow him at this point, correct? Yes, I believe that's what I'm doing -- getting up to. And are you afraid right now, or are you okay? I'm very, very, very, afraid. So what happens as you guys drive? We go by where the hotel is and he -- I said, "The hotel is right here," and we went right past it. I said, "I want to get out here and my dog." Okay. And what did he say? He locked the door and said, no -- I can't remember exactly the words. And how were you feeling at that point? I was scared. Was there ever any physical contact -- Yes. He hit me in the side of my head, right here. When did he hit you with his hand? When I wanted to get out of the car. When you passed the hotel or what? Yeah. So you go down this street; and, then, do you recognize this? Yes. Okay. Have you ever been in that home? Yes. Okay. Before that August night, had you ever been in that home? Never. That he was a dominant -- into dominance and submission and that I was a trick and I knew what I was doing there to try and hurt him. And what did you think he meant by calling you a trick? A whore, a prostitute. And you don't prostitute, right? No, I never -- ever have. Never been in trouble or accused of prostitution? Never, ever, no. So he's calling you a prostitute. What else is he saying to you? That I'm a nasty, white bitch and that I'm dirty and fat and that he could kill me and he would hit me in my head again here. He would hit

me in my back again and I was, like -- at one point he had a -- Let's back up. And when he's taking you to the bathroom, you think maybe -- you're telling the jury -- was it confusing? What was it? Well, because he stood me up and made me take my clothes off. Let's talk about that. I think you told the officers he kind of tore your clothes off? Kind of pulled my shorts off. Did you mean he literally walked up to you and tore your clothes apart or just got them off of you? Just got them off of me. And did you want to take your clothes off? No. He stood me up and said, "Let me get these clothes off of you." Okay. Did you have a bra on? Yes, I did, a sports bra. Did he take that? Yes. He pushed me down onto the ground, right on the -- where the blue rugs are by the bathtub. When the clothes are coming off, did you feel you could leave? No. That's when the dread set in because when he took my clothes and put them into the garbage bag and everything -- Where was the garbage bag? Did you see the garbage bag when you walked into the bathroom? That, you know, "Open your legs up, and let's do this," but he was having trouble -- Okay. Did you ever see his penis? Well, not a whole lot really because - Was he able to achieve an erection? No. Was your vagina exposed to him? Yes. Okay. Did you feel as if he was attempting to have sex with you? Yes. Did you think if he had been able to get an erection, he would have been able to penetrate you? Yes, he would have. And how long -- did he say anything about not achieving an erection? Yeah, and I just went to the right and ran.

Did you try to untie it or anything like that? Yes, I ran to the right, because I saw lights on at the house. And did you know the people who lived there? No, I knew nothing. And what were you wearing? I was naked. Do you remember if he said anything to you? Yes. He was telling me, "Get out of there. Get out of my family's house. Get out the property." And did he threaten you at all? Yes, he threatened to kill me. So now he's threatened to kill you again? Yes. Did you consent -- it's fair to say you consented to get into the car with him; is that correct? Yes. Did you ever consent to be driven to his house? No. Did you consent to being struck while in the car with him? No. Did you consent when he was locking the door and moving you around inside of his house? No. Did you consent when he asked for sex in terms of did you offer sex to him? No. Did you want to have sex with him? No. (4 RR at 36-120).

Cross examination, did you tell Deputy Dartez that Mr. Baugh told you he was taking you to his house in Chocolate Bayou? No. I would have never said that. Do you recall saying that your clothes were torn off? Well, yes, that could have been the phrase I used. And today you testified that if you had used the word "torn," you didn't mean it literally? I didn't mean ripped to shreds. Would you mind recounting for us how the clothes came off? Yes. In the bathroom I was -- he took me in the bathroom and he stood me -- I was standing, you know, walking in the bathroom and he told me, he said get the clothes -- "Get the clothes off of you. Take your F'n clothes off." So he

ripped -- I had a black tank top; and he took that up, over my head. When I say "ripped it off of me," like, it doesn't necessarily mean that he shredded it. He didn't just lift it off of me. It was more getting it off of me. That's why I used "ripped it off." Well, did you say that you were not able to see and you didn't know whether his penis was out or not? Yes, I did say that. You did? Okay. So you don't know if he -- he certainly didn't penetrate you? Correct. You don't even know if he had his penis out of his own pants? Yes, I do know that he had his penis out. How? No. I'm sorry. Okay. So you do know he had it out? Yes. (4 RR at 120-199).

**Dorothy Meshell:** And how did you first come into contact with the defendant? I was at a friend's house and an associate of mine was there named Stacy, and it was late. It was 2:00 a.m. and I needed a ride home to Friendswood and I didn't have one and Stacy had a ride coming to get her, which was Patrick. And when he pulled up and got there, I asked Stacy if she would ask him if I gave him gas money if he would give me a ride; and he said yes. He told me he was going to go back to his house because he wasn't going to go back to Friendswood without his driver's license. About what time did y'all return to his house after dropping Stacy off? At that time it had to be about 7:30, about 8:00 in the morning. And what happened once y'all got back to the defendant's house? When I went in there, he was sitting on the couch indulging with cocaine, smoking cocaine. So he was using drugs? Yes, ma'am. Okay.

And did he take you home right then? No. What happened then? He told me that he would take me home, but it was going to be a little bit. You know, to just chill and that he would get me home. At any point did he ask you for sex? Yes, ma'am. To give him oral sex. Okay. How did he say it? Was he demanding? What exactly -- He asked me to suck his d-i-c-k. Okay. Was this in a romantic way? No. It was in a disgusting way. He just became very mean. It just changed. The vibe got real weird. I'm sitting there and he's indulging in a lot of the drugs and he has his phone and I could tell he was watching porn. So you leave the defendant's house walking on foot? Yes, ma'am. Anything happen while you were walking? It was a long walk. I had been walking for about 30, 35 minutes, hoping I could see somebody, use their phone to call my mom but I saw a car coming up --because it was really dark outside. It was him. He pulled back up. You're walking. He pulls up beside you? Behind you? It was dark outside, and was I just walking. I see the headlights. I didn't know it was him until he pulled right up. Did he say anything to you? Yeah, he said, "Come on. I'm going to go ahead and take you home." Well, when we got to the -- when we were coming up that road that we were on and I saw that Family Dollar, I knew where I was at; and the road, you could either go left or right or straight. And to take me home, he would have needed to turn right; but he turned left. So y'all are fighting over your Cash App card, and then what happens? He kind of, like, pulls over. I'm thinking this is it for

me. He's probably going to beat me up. I'm calling the cops. That's it. I'm calling them; and I jumped out because he came to, like, a complete stop. So I was able to get out, and I called them immediately. You called the police? Yes, ma'am. What did the defendant do in response to you telling him you were going to call the police? (4 RR at 199-213). Cross examination, he didn't force you to have any encounter? No. And he made threats, but he never punched you? Not when I was in the house. So you had a tussle in the car at some point? Right. Over my money. The cops got there, and they gave me a ride home. You went and made a call? In other words, you didn't walk a distance, just far enough to make a call? I had my phone. I had no service, but you can still dial 9-1-1. But he didn't stick around? No. (4 RR at 213-222).

**Katie Wooten:** So it would have been -- January of 2023 sound right? Sounds right. Where were you when you first met the defendant? I was in a small house in Alvin, and I had been stranded in Alvin for about a week at that point. I took a ride from somebody I didn't know very well. They said they had some work for me in Alvin, rode with her. Didn't know -- Let me ask you this: He's -- where did he pick you up from when he told you he would drive you to Houston? That house I was at in Alvin. It was by -- I wish I knew the exact address. I remember it was by a funeral parlor. And did you promise him you would do anything for him if he gave you that ride? No. You never said, "I'll have sex with you"? No. In the bedroom when we were

both sitting down, his humor and any warmth completely left his tone. He had no smile on his face and spoke of sexual favors as though that had been understood and implied the entire time, which was very -- it threw me off very much. It was the complete opposite of how our entire interaction had been going. How did that make you feel when he started wanting those sexual favors? I was extremely disappointed. I was deeply disappointed that he was not a character guy like he'd been because rare to meet someone who actually doesn't want something in return. Do you remember him telling you to get unclothed? Yeah. So the defendant told you to take your clothes off? Is that something -- I'm sorry. Go ahead. You have to say yes. That's what I was going to say, yes. Did you want to take your clothes off? No. So you had the sex with him the one time, right? Let's talk about that. After you had that sexual encounter with him, did he say anything to you? Yes. He -- I thought it would have put some ease back into the -- back into things since he had what he wanted but instead he started talking about --insisting on a second round having sex, yet, again already. (4 RR at 222-253). Cross examination, did you -- you had sex -- you testified that you had sex with Mr. Baugh one time? Yes. And that it was consensual? I wouldn't call it consensual personally but --that's the legal definition maybe, but I wouldn't call it consensual at all. That was the last thing I want to do, but I'm trying to appease someone. But I've never done that in my life. And you said he hit you in the face and



it caused bruising? Yeah, it swelled. Swelling? Swelled and bruised. (4 RR at 253-287).

**Robert Gonzales:** I'm employed at the Brazoria County Sheriff's Office as a Texas peace officer. It was an aggravated kidnapping is what Investigator Yates -- when I went and made contact with him, after being told, that's what I was told the charge was going to be, aggravated kidnapping. When they pulled in front of the house, I pulled into the yard to cover the back because that's what we do to make sure no one runs out the back. So that was my deal. And then they placed him in handcuffs and after seeing that, I retrieved my camera and went back to where they had Mr. Baugh. So you had a body cam on the whole time that you interacted with the defendant? I initially got out of the truck, went over there; and after I seen he was in handcuffs, I turned around and went back to my truck, put on my body cam to come back to read him his Miranda warning. So on my report I put that "Baugh states to me that she put her clothes in a bag and put them on the porch." He's just telling me to look at all his cases. What did he say about the cases? He said that he's gotten -- not gotten away, I guess beat the cases and look at all of them. So he has multiple cases; and he hasn't been convicted of any of them, I don't believe. (4 RR at 287-306). Cross examination, Mr. Baugh continuing to talk after being informed that he has the right not to is that he's constantly denying that he did anything wrong in this case, right?

Yes, he is denying. Nothing that you would consider a confession came from him, did it? You're saying what he said did not amount to a confession? Yes. So he didn't confess to anything, did he? No. I'm going to say he's talking about the aggravated kidnapping, why he would take her -- if he kidnapped someone, why would he bring her to his own house. He was saying, "Yes, she was here, but I didn't kidnap her." Yes. So when he is, for lack of better terms, bragging about beating these other cases, does he ever say that he was falsely accused of those charges? I didn't hear him say that. No. (4 RR at 306-312). The State rested. (5 RR at 129). Appellant rested. (5 RR at 130).

Appellant found guilty. At punishment, **Dorothy Meshell** recalled: repeat of guilt-innocence testimony. (6 RR at 6-43). **Ursula Tims** was recalled: repeat of testimony outside the presence of the jury during guilt-innocence. (6 RR at 43-91).

## SUMMARY OF THE ARGUMENT

### Point of Error One:

Appellant's conviction are not supported by sufficient evidence. The evidence adduced was insufficient to find that Appellant committed the offense of aggravated kidnapping. Thus, there was a reasonable doubt as to whether Appellant was guilty, and the evidence was insufficient to find Appellant guilty. Applying, *Brooks v. State*, 323 S.W.3d 893,894-95 (Tex. Crim. App. 2010) (plurality op.); *id.* at 926. *Jackson v. Virginia*, 443 U.S. 307, 99 S. Ct. 2781. *Burden v. State*, 55 S.W.3d 608, 612 (Tex. Crim. App. 2001).

The legal sufficiency standard of review is the only standard the Court will 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. *Temple v. State*, 390 S.W.3d 341, 360 (Tex. Crim. App. 2013) (“[T]his Court now applies only one standard ‘to evaluate whether the evidence is sufficient to support a criminal conviction beyond a reasonable doubt: legal sufficiency.’”); *Kolb v. State*, 523 S.W.3d 211, 214 (Tex. App.—Houston [14th Dist.] 2017, pet. ref’d). For this review, we consider the combined and cumulative force of all admitted evidence and any reasonable inferences therefrom in the light most favorable to the verdict to determine whether the jury was rationally justified in its decision. *Johnson v. State*, 509 S.W.3d

320, 322 (Tex. Crim. App. 2017); *Kolb*, 523 S.W.3d at 214. Direct evidence and circumstantial evidence are equally probative; circumstantial evidence alone may be sufficient to uphold a conviction so long as the cumulative force of all the incriminating circumstances is sufficient to support the conviction. *Ramsey v. State*, 473 S.W.3d 805, 809 (Tex. Crim. App. 2015).

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## **ARGUMENT**

### **APPELLANT'S POINT OF ERROR ONE:**

#### **THE EVIDENCE ADDUCED AT TRIAL WAS LEGALLY INSUFFICIENT TO SUPPORT APPELLANT'S CONVICTION.**

##### **Sufficiency**

Appellant challenges the legal sufficiency of the evidence to support his conviction. The Court of Criminal Appeals has held that only one standard should be used in a criminal case to evaluate the sufficiency of the evidence to support findings that must be established beyond a reasonable doubt: legal sufficiency. *Brooks v. State*, 323 S.W.3d 893,894-95 (Tex. Crim. App. 2010). Accordingly, the review of the sufficiency of the evidence in this case is under a rigorous and proper application of the legal sufficiency standard of *Jackson v. Virginia*, 443 U.S. 307 (1979). *Brooks*, 323 S.W.3d at 906. When reviewing the sufficiency of the evidence, it is proper to view all of the evidence in the light most favorable to the verdict to determine whether the fact finder was rationally justified in finding guilt beyond a reasonable doubt. *Brooks*, 323 S.W.3d at 899; *Williams v. State*, 235 S.W.3d 742, 750 (Tex. Crim. App. 2007). This Court will defer to the fact finder's resolution of conflicting evidence unless the resolution is not rational. *Brooks*, 323 S.W.3d at 902 n.19, 907. Appellant argues the evidence is legally insufficient to support his conviction. The

Court of Criminal Appeals has held that only one standard should be used to evaluate the sufficiency of the evidence in a criminal case: legal sufficiency. *Brooks v. State*, 323 S.W.3d 893, 894 (Tex. Crim. App.2010). Accordingly, the review of the sufficiency of the evidence in this case under a proper application of the *Jackson v. Virginia*, 443 U.S. 307, 99 S.Ct. 2781, 61 L.Ed.2d 560 (1979), legal sufficiency standard. *Brooks*, 323 S.W.3d at 905.

### **Standard of Review**

When reviewing the sufficiency of the evidence, the view is to all of the evidence in the light most favorable to the verdict to determine whether the jury was rationally justified in finding guilt beyond a reasonable doubt. *Id.* at 898. *Dewberry v. State*, 4 S.W.3d 735,740 (Tex. Crim. App.1999); *see also Sharp v. State*, 707 S.W.2d 611,614 (Tex. Crim. App.1986) (stating the jury may choose to believe or disbelieve any portion of the testimony at trial). The duty as a reviewing court is to ensure that the evidence presented actually supports a conclusion that the defendant committed the crime. *Williams v. State*, 235 S.W.3d 742, 750 (Tex. Crim. App.2007).

The legal sufficiency standard of review is the only standard the Court will 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. *Temple v. State*, 390 S.W.3d 341, 360 (Tex. Crim. App. 2013) (“[T]his Court now applies

only one standard ‘to evaluate whether the evidence is sufficient to support a criminal conviction beyond a reasonable doubt: legal sufficiency.’”); *Kolb v. State*, 523 S.W.3d 211, 214 (Tex. App.—Houston [14th Dist.] 2017, pet. ref’d). For this review, we consider the combined and cumulative force of all admitted evidence and any reasonable inferences therefrom in the light most favorable to the verdict to determine whether the jury was rationally justified in its decision. *Johnson v. State*, 509 S.W.3d 320, 322 (Tex. Crim. App. 2017); *Kolb*, 523 S.W.3d at 214. Direct evidence and circumstantial evidence are equally probative; circumstantial evidence alone may be sufficient to uphold a conviction so long as the cumulative force of all the incriminating circumstances is sufficient to support the conviction. *Ramsey v. State*, 473 S.W.3d 805, 809 (Tex. Crim. App. 2015).

### ***Aggravated Kidnapping***

Appellant challenges the sufficiency of the evidence; and to prove that he had the required culpable mental state to commit the offense of kidnapping. A person commits the offense of kidnapping "if he intentionally or knowingly abducts another person." See Tex. Penal Code § 20.03(a). "'Abduct' means to restrain a person with intent to prevent his liberation by: (A) secreting or holding him in a place where he is not likely to be found; or (B) using or threatening to use deadly force." *Id.* § 20.01(2); see *id.* §20.01(1) (defining "restrain" to mean "to restrict a person's

movements without consent, so as to interfere substantially with the person's liberty, by moving the person from one place to another or by confining the person"). The offense of kidnapping is a result-oriented offense. *Llorens v. State*, 520 S.W.3d 129, (Tex. App.—Austin 2017, pet. ref'd) (explaining that kidnapping is result-oriented offense and that offense "is legally completed when the defendant, at any time during the restraint, forms the intent to prevent liberation by secreting or holding another in a place unlikely to be found" (quoting *Laster v. State*, 275 S.W.3d 512, 521 (Tex. Crim. App. 2009))); *Gonzales v. State*, 270 S.W.3d 282, 288 (Tex. App.—Amarillo 2008, pet. ref'd) (explaining that "ultimate issue in kidnapping offense is the abduction of the victim, i.e., the result" (citing *Phillips v. State*, 597 S.W.2d 929, 936 (Tex. Crim. App. 1980))). "A person acts intentionally, or with intent, with respect to ... a result of his conduct when it is his conscious objective or desire ... to cause the result." Tex. Penal Code § 6.03(a). "A person acts knowingly, or with knowledge, with respect to a result of his conduct when he is aware that his conduct is reasonably certain to cause the result." Id. § 6.03(b).

As charged in the underlying case, a person commits the offense of aggravated kidnapping if "he intentionally or knowingly abducts another person" and uses or exhibits a deadly weapon during the commission of the offense. TEX. PENAL CODE ANN. § 20.04(b) (West 2019). The term "abduct" means "to restrain a person with



intent to prevent [her] liberation by . . . using or threatening to use deadly force." Id. at §20.01(2)(B) (West Supp. 2019). "Restrain" means to "restrict a person's movements without consent, so as to interfere substantially with the person's liberty, by moving the person from one place to another or by confining the person." Id. at § 20.01(1). Restrain is "without consent" if it is accomplished by force, intimidation, or deception. Id. at § 20.01(1)(A). "The ultimate issue in a kidnapping offense is the abduction of the victim" and not "how the person restrains or prevents the liberation of another." *Gonzales v. State*, 270 S.W.3d 282, 288 (Tex. App.—Amarillo 2008, pet. ref'd). Kidnapping is a continuous, ongoing event. See *Weaver v. State*, 657 S.W.2d 148, 150 (Tex. Crim. App. 1983). A kidnapping becomes a completed offense when a restraint is accomplished, and there is evidence that the actor intended to prevent liberation and that he intended to do so by the use or threatened use of deadly force. *Mason v. State*, 905 S.W.2d 570, 575 (Tex. Crim. App. 1995). The law does not require any minimum length of time for which the victim must be restrained. *Robinson v. State*, 568 S.W.3d 718, 723 (Tex. App.—Amarillo 2019, no pet.) (citing *Santellan v. State*, 939 S.W.2d 155, 163 (Tex. Crim. App. 1997)). A kidnapping may occur even when a victim willingly accompanies her abductor if she is restrained against her will. See *Robinson*, 568 S.W.3d at 723 (citing *Crews v. State*, 06-09-00080-CR, 2009 Tex. App. LEXIS 9677, at \*11-12 (Tex. App.—Texarkana

Dec. 22, 2009, pet. ref'd) (mem. op., not designated for publication)). The gravamen of a continuing offense is the operation of an "unintermittent force" set in motion by a "single impulse" that causes the offense to be a continuous act without regard to the mere passage of time. See *State v. Chinedu Godwin Ojiaku*, 424 S.W.3d 633, 636 (Tex. App.—Dallas 2013, pet. ref'd) (citing *Grissom v. State*, 119 Tex. Crim. 494, 43 S.W.2d 580, 581 (Tex. Crim. App. 1931)).

### *Analysis*

The indictment alleges: on or about August 10, 2023, in Brazoria County, Appellant did:

did then and there with the intent to violate or abuse sexually Laura Kelly intentionally or knowingly abduct Laura Kelly, hereafter styled the complainant without her consent so as to interfere substantially with her liberty by moving her from one place to another or confining her with the intent to prevent her liberation, by secreting or holding her in a place where she was not likely to be found;

And the Grand Jurors aforesaid, upon their oaths aforesaid, in said County and State, do further present in and to said Court that **PATRICK KENT BAUGH**, hereinafter styled Defendant, on or about the **10th day of August, 2023**, and before the presentment of this indictment, in said County and State, did then and there with the intent to cause bodily injury to Laura Kelly intentionally or knowingly abduct Laura Kelly, hereafter styled the complainant without her consent so as to interfere substantially with her liberty by moving her from one place to another or confining her with the intent to prevent her liberation, by secreting or holding her in a place where she was not likely to be found;

And the Grand Jurors aforesaid, upon their oaths aforesaid, in said

County and State, do further present in and to said Court that **PATRICK KENT BAUGH**, hereinafter styled Defendant, on or about the **10th day of August, 2023**, and before the presentment of this indictment, in said County and State, did then and there with the intent terrorize Laura Kelly intentionally or knowingly abduct Laura Kelly, hereafter styled the complainant without her consent so as to interfere substantially with her liberty by moving her from one place to another or confining her with the intent to prevent her liberation, by secreting or holding her in a place where she was not likely to be found;

(1 CR at 7).

**Laura Kelly's trial testimony was:** Where were you when you first met the defendant in this case? At a gas station in La Marque. What were you doing at the station in La marque? I was sitting with my dog. All right. And what were you doing as you sat at the gas station? I was smoking a cigarette. Okay. And what was your plan as you hung out at the gas station? So I was smoking a cigarette, sitting with my dog before I went in. And you said you saw the defendant there? Yes. Okay. How did you come to see him? He walked up by me and -- What kind of car did he have? A BMW. Did you think it was a nice car? It was pretty fancy looking. Yes. He went and bought me a beer from inside. Now, let's talk about that for a little bit. Okay? Yes. Do you have a drinking problem? Basically, yes, I do. Working on it. That's good. And how -- were you drunk when this happened? No. I hadn't had anything to drink. So he offered to get you a drink? Yes. Before you got into the car with the defendant, did he say he was going to take you to his house? No. Had he told you that, what would

you have done? Not gone. He asked me if I wanted a ride and at first I was like, "No. I have a dog and you have a really nice car. You don't want my dog in your car," I didn't think. And then I was thinking, it's right down the road and then I -- So you're going to follow him at this point, correct? Yes, I believe that's what I'm doing -- getting up to. And are you afraid right now, or are you okay? I'm very, very, very, afraid. So what happens as you guys drive? We go by where the hotel is and he -- I said, "The hotel is right here," and we went right past it. I said, "I want to get out here and my dog." Okay. And what did he say? He locked the door and said, no -- I can't remember exactly the words. And how were you feeling at that point? I was scared. Was there ever any physical contact -- Yes. He hit me in the side of my head, right here. When did he hit you with his hand? When I wanted to get out of the car. When you passed the hotel or what? Yeah. So you go down this street; and, then, do you recognize this? Yes. Okay. Have you ever been in that home? Yes. Okay. Before that August night, had you ever been in that home? Never. That he was a dominant -- into dominance and submission and that I was a trick and I knew what I was doing there to try and hurt him. And what did you think he meant by calling you a trick? A whore, a prostitute. And you don't prostitute, right? No, I never -- ever have. Never been in trouble or accused of prostitution? Never, ever, no. So he's calling you a prostitute. What else is he saying to you? That I'm a nasty, white bitch and that I'm dirty and fat

and that he could kill me and he would hit me in my head again here. He would hit me in my back again and I was, like -- at one point he had a -- Let's back up. And when he's taking you to the bathroom, you think maybe -- you're telling the jury -- was it confusing? What was it? Well, because he stood me up and made me take my clothes off. Let's talk about that. I think you told the officers he kind of tore your clothes off? Kind of pulled my shorts off. Did you mean he literally walked up to you and tore your clothes apart or just got them off of you? Just got them off of me. And did you want to take your clothes off? No. He stood me up and said, "Let me get these clothes off of you." Okay. Did you have a bra on? Yes, I did, a sports bra. Did he take that? Yes. He pushed me down onto the ground, right on the -- where the blue rugs are by the bathtub. When the clothes are coming off, did you feel you could leave? No. That's when the dread set in because when he took my clothes and put them into the garbage bag and everything -- Where was the garbage bag? Did you see the garbage bag when you walked into the bathroom? That, you know, "Open your legs up, and let's do this," but he was having trouble -- Okay. Did you ever see his penis? Well, not a whole lot really because - Was he able to achieve an erection? No. Was your vagina exposed to him? Yes. Okay. Did you feel as if he was attempting to have sex with you? Yes. Did you think if he had been able to get an erection, he would have been able to penetrate you? Yes, he would have. And how long -- did he say

anything about not achieving an erection? Yeah, and I just went to the right and ran. Did you try to untie it or anything like that? Yes, I ran to the right, because I saw lights on at the house. And did you know the people who lived there? No, I knew nothing. And what were you wearing? I was naked. Do you remember if he said anything to you? Yes. He was telling me, "Get out of there. Get out of my family's house. Get out the property." And did he threaten you at all? Yes, he threatened to kill me. So now he's threatened to kill you again? Yes. Did you consent -- it's fair to say you consented to get into the car with him; is that correct? Yes. Did you ever consent to be driven to his house? No. Did you consent to being struck while in the car with him? No. Did you consent when he was locking the door and moving you around inside of his house? No. Did you consent when he asked for sex in terms of did you offer sex to him? No. Did you want to have sex with him? No. (4 RR at 36-120).

Cross examination, Did you tell Deputy Dartez that Mr. Baugh told you he was taking you to his house in Chocolate Bayou? No. I would have never said that. Do you recall saying that your clothes were torn off? Well, yes, that could have been the phrase I used. And today you testified that if you had used the word "torn," you didn't mean it literally? I didn't mean ripped to shreds. Would you mind recounting for us how the clothes came off? Yes. In the bathroom I was -- he took me in the bathroom and he stood me -- I was standing, you know, walking in the bathroom and he told me, he

said get the clothes -- "Get the clothes off of you. Take your F'n clothes off." So he ripped -- I had a black tank top; and he took that up, over my head. When I say "ripped it off of me," like, it doesn't necessarily mean that he shredded it. He didn't just lift it off of me. It was more getting it off of me. That's why I used "ripped it off." Well, did you say that you were not able to see and you didn't know whether his penis was out or not? Yes, I did say that. You did? Okay. So you don't know if he -- he certainly didn't penetrate you? Correct. You don't even know if he had his penis out of his own pants? Yes, I do know that he had his penis out. How? No. I'm sorry. Okay. So you do know he had it out? Yes. (4 RR at 120-199).

***Paragraph One***

**“did then and there with the intent to violate or abuse sexually** Laura Kelly intentionally or knowingly abduct Laura Kelly, hereafter styled the complainant without her consent so as to interfere substantially with her liberty by moving her from one place to another or confining her with the intent to prevent her liberation, by secreting or holding her in a place where she was not likely to be found.”

So he offered to get you a drink? Yes. Before you got into the car with the defendant, did he say he was going to take you to his house? No. Had he told you that, what would you have done? Not gone. He asked me if I wanted a ride and at first I was like, "No. I have a dog and you have a really nice car. You don't want my dog

in your car," I didn't think. And then I was thinking, it's right down the road and then I -- So you're going to follow him at this point, correct? Yes, I believe that's what I'm doing -- getting up to. So Appellant offered her a ride-and no sex- Well, because he stood me up and made me take my clothes off. Let's talk about that. I think you told the officers he kind of tore your clothes off? Kind of pulled my shorts off. Did you mean he literally walked up to you and tore your clothes apart or just got them off of you? Just got them off of me. And did you want to take your clothes off? No. He stood me up and said, "Let me get these clothes off of you." Okay. Did you have a bra on? Yes, I did, a sports bra. Did he take that? Yes. He pushed me down onto the ground, right on the -- where the blue rugs are by the bathtub. When the clothes are coming off, did you feel you could leave? No. That's when the dread set in because when he took my clothes and put them into the garbage bag and everything -- Where was the garbage bag? Did you see the garbage bag when you walked into the bathroom? That, you know, "Open your legs up, and let's do this," but he was having trouble -- Okay. Did you ever see his penis? Well, not a whole lot really because - Was he able to achieve an erection? No. Was your vagina exposed to him? Yes. Okay. Did you feel as if he was attempting to have sex with you? Yes. Did you think if he had been able to get an erection, he would have been able to penetrate you? Yes, he would have. And how long -- did he say anything about not achieving an erection?



(4 RR at 36-120).

On cross examination-Okay. So you don't know if he -- he certainly didn't penetrate you? Correct. You don't even know if he had his penis out of his own pants? Yes, I do know that he had his penis out. How? No. I'm sorry. Okay. So you do know he had it out? Yes. (4 RR at 120-199). There was insufficient evidence to support intent to violate or abuse sexually when she was offered a ride that she accepted. Appellant offered a ride and she took it, she also accepted an alcohol beverage, took the ride, it was not until much later after being taken to Appellant's residence any suggestion of sex or to violate sexually had occurred.

***Paragraph Two***

**“did then and there with the intent to cause bodily injury to Laura Kelly intentionally or knowingly abduct Laura Kelly, hereafter styled the complainant without her consent so as to interfere substantially with her liberty by moving her from one place to another or confining her with the intent to prevent her liberation, by secreting or holding her in a place where she was not likely to be found.”**

No-Appellant may have struck her, he did not move her from one place to another-she was not held. Appellant offered a ride and she took it, she also accepted an alcohol beverage, took the ride, it was not until much later after being in the car with Appellant there was any suggestion of violence or bodily injury had occurred.

He would hit me in my back again and I was, like -- at one point he had a -- Let's back up. And when he's taking you to the bathroom, you think maybe -- you're telling the jury -- was it confusing? What was it? Well, because he stood me up and made me take my clothes off. Yeah, and I just went to the right and ran. Did you try to untie it or anything like that? Yes, I ran to the right, because I saw lights on at the house. And did you know the people who lived there? No, I knew nothing. (4 RR at 36-120).

***Paragraph Three***

**“did then and there with the intent terrorize Laura Kelly intentionally or knowingly abduct Laura Kelly, hereafter styled the complainant without her consent so as to interfere substantially with her liberty by moving her from one place to another or confining her with the intent to prevent her liberation, by secreting or holding her in a place where she was not likely to be found”**

There was insufficient evidence presented or testimony regarding being terrorized. Appellant offered a ride and she took it, she also accepted an alcohol beverage, took the ride, it was not until much later if at all-that Appellant there was any suggestion of terrorizing anyone.

Did you consent -- it's fair to say you consented to get into the car with him; is that correct? Yes. Did you ever consent to be driven to his house? No. Did you consent to being struck while in the car with him? No. Did you consent when he was

locking the door and moving you around inside of his house? No. Did you consent when he asked for sex in terms of did you offer sex to him? No. Did you want to have sex with him? No. (4 RR at 36-120).

Appellant's conviction is not supported by sufficient credible evidence. The *Jackson v. Virginia* standard is the only standard a reviewing court should apply to determine whether the evidence is sufficient to support each element of a criminal offense the State is required to prove beyond a reasonable doubt. *Brooks v. State*, 323 S.W.3d 893, 894 (Tex. Crim. App. 2010). All of the evidence is viewed in the light most favorable to the verdict to determine whether the jury was rationally justified in finding guilt beyond a reasonable doubt, *Brooks*, 323 S.W.3d at 902. The Court will defer to the fact finder's resolution of conflicting evidence unless the resolution is not rational. *Brooks*, 323 S.W.3d at 907. Under the review of the evidence required by *Brooks*, even in the light most favorable to the verdict, a rational jury could not conclude that this evidence is such as to permit it to find beyond a reasonable doubt that Appellant had any intent, nor the *mens rea* to commit aggravated kidnapping. The conviction should be reversed and this Court should render a judgment of acquittal.

#### PRAYER FOR RELIEF

WHEREFORE, PREMISES CONSIDERED, Appellant, Patrick Kent Baugh, prays that this Court would reverse Appellant's convictions, remand the matter to the trial court for a new trial. Further, Appellant prays for any and all other relief to which Appellant may be entitled in law and equity.

Respectfully submitted,

/S/CARY M. FADEN

**Cary M. Faden**

54 Sugar Creek Center Blvd., Suite 200

Sugar Land, Texas 77478

Telephone: (281) 491-6182

Facsimile: (281) 491-0049

Texas Bar No. 06768725

**E-MAIL: caryfaden@aol.com**

Attorney For Appellant

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**CERTIFICATE OF COMPLIANCE, T.R.A.P., RULE 9.4(3)**

\_\_\_\_\_ In accordance with TEX. R. APP. P. 9.4(3), I Cary M. Faden, certify that this is a computer generated document and I state that the number of words in this document is 10,664 words. I am relying on the word count of the computer program used to prepare this document.

/S/CARY M. FADEN

**Cary M. Faden**

### CERTIFICATE OF SERVICE

In accordance with TEX. R. APP. P. 9.5, I Cary M. Faden, certify that a true and correct copy of the foregoing brief for appellant has been served, by U.S. Mail, to Patrick Kent Baugh, to the attorney for the State Of Texas, Tom Selleck, District Attorney, 111 E. Locust Street, Angleton, Texas 77515, by electronic filing manager, on this 1st day of December, 2024.

**/S/CARY M. FADEN**

**Cary M. Faden**

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caryfaden@aol.com

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trey picard		bcdaeservice@brazoria-county.com	12/1/2024 1:05:38 PM	SENT