Affirmed as Modified and Opinion Filed October 4, 2023

In The
Court of Appeals
Fifth District of Texas at Dallas

No. 05-22-01073-CR

HECTOR GIOVANI FLORESSANCHEZ, Appellant
V.
THE STATE OF TEXAS, Appellee

On Appeal from the 283rd Judicial District Court
Dallas County, Texas
Trial Court Cause No. F20-77129

MEMORANDUM OPINION

Before Justices Goldstein, Garcia, and Miskel
Opinion by Justice Miskel

Hector Giovani Flores Sanchez[1] appeals the trial court's judgment convicting him of aggravated sexual assault of a child younger than fourteen years of age. A jury found Flores guilty and assessed his punishment at thirty years' imprisonment. Flores raises two issues on appeal arguing (1) the evidence is insufficient to support his conviction; and (2) the trial court's judgment incorrectly reflects that he pleaded

[1]The indictment and judgment in this case reflect that Appellant's name is "Hector Giovani Floressanchez." Appellant's briefing refers to him as Hector Flores-Sanchez. Appellant, however, signed "Hector Flores" on his election of punishment form and on his notice of appeal. Accordingly, this Court will address Appellant as "Flores."

guilty to the charged offense. The State raises three cross-points alleging errors in the trial court's judgment.

We conclude the evidence is sufficient to support Flores's conviction and overrule his first issue. We sustain Flores's second issue and the State's three cross-points. We affirm the trial court's judgment as modified.

I. FACTUAL AND PROCEDURAL BACKGROUND

Jenny's mother met Flores and began a relationship with him while they were in high school.[2] When she was fifteen years old, she became pregnant with Jenny. Flores and Jenny's mother maintained a romantic relationship that lasted about a year after Jenny was born. Under Flores and Mother's custody order, Jenny spent every other weekend with Flores. Flores lived with his father, Marcelino Flores, in Dallas. Mother often allowed Jenny to spend extra nights with Flores beyond the designated weekend nights.

During one weekend when Jenny, then six years old, was staying with Flores, Flores asked Mother if Jenny could spend an additional night with him. Mother agreed, and Jenny was scheduled to stay with Flores until the following Monday morning. On Sunday night, however, Marcelino called Mother, told her "something was going on at the house," and asked Mother to come to his house and pick up

[2]We use aliases to protect the identity of the complainant. *See* Tex. R. App. P. 9.8 cmt., 9.10(a)(3); *McClendon v. State*, 643 S.W.2d 936, 936 n.1 (Tex. Crim. App. [Panel Op.] 1982).

Jenny. During their phone call, Mother heard Jenny yelling and crying in the background.

When Mother arrived at Marcelino's home to pick up Jenny, she asked Marcelino what had happened to upset Jenny. Marcelino told her that the adults in the house had been arguing over a truck. Flores was not at the house.

A few days later, Jenny complained to Mother that she was having severe stomach pains. Mother had also noticed that Jenny was acting aggressively, wetting the bed, and suffering from nightmares. When Mother asked Jenny if anything had happened over the weekend to upset her or to have caused her stomach pains, Jenny told her that Flores "put his private thing in her private." Further, Jenny told Mother that Flores "inserted his two fingers inside of her butt." Jenny appeared scared and was crying as she described the incident to Mother.

Mother took Jenny to Baylor hospital so that her stomach pains could be checked out. When Mother was alone with the doctor, she informed the doctor that Jenny had told her that Flores sexually assaulted her. Soon after, police officers arrived to talk to Mother and Jenny.

The hospital subsequently referred Mother and Jenny to Children's Medical Center. Once Mother and Jenny arrived at Children's, medical personnel discovered that Jenny's appendix was about to rupture, so they rushed her into emergency surgery.

Due to surgery complications, the investigation into the sexual abuse allegation was delayed. However, about a week-and-a-half after Jenny's surgery, Mother took Jenny to the Dallas Children's Advocacy Center for a forensic interview. And about a week after that, Jenny returned to Children's for a sexual assault examination.

Flores was subsequently charged with aggravated sexual assault of a child. Flores pleaded not guilty to the charge, and the case was tried to a jury. At the time of trial, Jenny was eight years old. Jenny told the jury that when she visited her father, Flores, he made her sleep in a bed with him even though she wanted to sleep with her grandfather, Marcelino. Further, she testified that one night when she was sleeping with Flores, Flores "put his private part inside of [hers]." Jenny described a boy's "front part" as the part a boy uses "to pee." Jenny stated that the "front part" was the part that Flores put inside of her. Jenny said that it hurt when Flores did this. Further, Jenny testified that while Flores was inside of her, "it felt like he was jumping up and down."

Jenny also testified that Flores "put his two fingers inside [her] front part," and that "one of his nails got stuck in [her] private part." Jenny stated that she smelled "something gross" when Flores moved away from her. Jenny believed that her cousin, D.M., saw Flores sexually assault her and that he told Marcelino about it.

The nurse who conducted the sexual assault exam of Jenny testified that the results of Jenny's exam were normal. However, she stated that eighty to ninety-five percent of all sexual assault exams "are completely normal." The nurse further testified that Jenny told her Flores "had been messing with her."

Dr. Elena Doskey De Lobon, the director of clinical training at the Dallas Children's Advocacy Center, testified as an expert in child abuse. Dr. Doskey testified that over seventy-five percent of the time, the perpetrator of the child abuse is somebody the child knows and trusts. Additionally, she stated bed wetting in older, potty-trained children could be indicative of physiological distress. Dr. Doskey explained to the jury that most of the time, children do not lie about sexual abuse.

D.M., Jenny's cousin, and Marcelino, Jenny's grandfather, testified on behalf of Flores. Both D.M. and Marcelino were present in the home the night Jenny reported the sexual assault. D.M. denied seeing Flores abuse Jenny and also denied telling Marcelino he saw Flores sexually assault Jenny. D.M. confirmed, however, that Jenny slept in the same bed as Flores when she visited Flores. D.M also testified he saw Jenny crying the night of the assault and Jenny wanted to leave, but Flores wanted her to stay.

As for Marcelino, he testified he never saw Flores sleep in the same room as Jenny and claimed Flores always slept with his two brothers in a different bed than the one Jenny used. Further, Marcelino testified he called Jenny's mother to pick her

up that evening because Flores had scolded Jenny for not wanting to take a bath or go to sleep, and as a result Jenny became upset, cried, and wanted her mother.

The jury found Flores guilty of the charged offense and assessed his punishment at thirty years' imprisonment.

II. SUFFICIENCY OF THE EVIDENCE

In his first issue, Flores contends the evidence was insufficient to support his conviction because (1) D.M. and Marcelino discredited Jenny's testimony that D.M. saw the assault and told Marcelino about it and (2) the State failed to present any physical or forensic evidence of the sexual assault. The State responds that any conflict in the evidence raised a fact issue for the jury to resolve, and it was not required to present physical or forensic evidence of the sexual assault. We agree with the State and overrule Flores's first issue.

A. Standard of Review

Under the Due Process Clause, a criminal conviction must be based on legally sufficient evidence. *Harrell v. State*, 620 S.W.3d 910, 913 (Tex. Crim. App. 2021). When reviewing the sufficiency of the evidence, an appellate court considers all 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. *See Jackson v. Virginia*, 443 U.S. 307, 318–19 (1979); *Harrell*, 620 S.W.3d at 913–14. Further, an appellate court is required to defer to the jury's credibility and weight determinations because the jury is the sole judge of the witnesses' credibility and the weight

assigned to their testimony. *See Jackson*, 443 U.S. at 319, 326; *Harrell*, 620 S.W.3d at 914. An appellate court will consider all evidence when reviewing the sufficiency of the evidence, whether direct or circumstantial, properly or improperly admitted, or submitted by the prosecution or defense. *Jenkins v. State*, 493 S.W.3d 583, 599 (Tex. Crim. App. 2016).

B. Applicable Law

A person commits the offense of aggravated sexual assault if he intentionally or knowingly causes the penetration of the sexual organ of a child by any means and the child was younger than fourteen years of age. *See* TEX. PEN. CODE ANN. § 22.021(a)(1)(B)(i), (a)(2)(B). The testimony of a child victim alone is sufficient to support a conviction for aggravated sexual assault of a child. *See* TEX. CODE CRIM. PROC. ANN. art. 38.07; *Lee v. State*, 186 S.W.3d 649, 655 (Tex. App.—Dallas 2006, pet. ref'd).

C. The Evidence is Sufficient to Support Flores's Conviction

Initially, Flores claims the evidence is insufficient because D.M. and Marcelino discredited Jenny's testimony that D.M. saw the assault and told Marcelino about it. This argument, however, goes to the jury's assessment of the weight and credibility of the evidence. The jury, as the trier of fact, "is the sole judge of the credibility of the witnesses and of the strength of the evidence." *Fuentes v. State*, 991 S.W.2d 267, 271 (Tex. Crim. App. 1999). The jury may choose to believe

or disbelieve any portion of the witnesses' testimony. *Sharp v. State*, 707 S.W.2d 611, 614 (Tex. Crim. App. 1986).

The record reflects that Jenny gave a detailed description of an incident involving Flores's penetration of her and sexual contact with her. Jenny's detailed account of the sexual abuse, even if unsupported by any other evidence, was sufficient to support Flores's conviction for aggravated sexual assault. *See* TEX. CODE CRIM. PROC. ANN. art. 38.07(a); *Villalon v. State*, 791 S.W.2d 130, 134 (Tex. Crim. App. 1990) (concluding child victim's unsophisticated terminology alone established element of penetration beyond a reasonable doubt); *Lee*, 186 S.W.3d at 655. Moreover, to the extent that Jenny's testimony contradicts that of other witnesses, the jury, as trier of fact, held the ultimate authority to determine the credibility of the witnesses and the weight to give the testimony. TEX. CODE CRIM. PROC. ANN. art. 38.04; *Fuentes*, 991 S.W.2d at 271.The jury chose to believe Jenny's testimony, and we defer to the jury's determination of a witness's credibility. *Braughton v. State*, 569 S.W.3d 592, 608, 610 (Tex. Crim. App. 2018).

Flores also claims that the evidence is insufficient because the State failed to introduce physical or forensic evidence of the sexual assault. Physical or forensic evidence, however, is not required when, as in this case, the complainant provides ample testimony to establish a sexual assault occurred. *See Bargas v. State*, 252 S.W.3d 876, 888 (Tex. App.—Houston [14th Dist.] 2008, no pet.); *see also Mitchell v. State*, No. 05-19-00296-CR, 2020 WL 4047963, at *3 (Tex. App.—Dallas July

20, 2020, no pet.) (mem. op., not designated for publication) (holding the evidence was sufficient to support the appellant's conviction for aggravated sexual assault of a child under the age of fourteen even in the absence of medical or physical evidence of the sexual assault). Moreover, Jenny was not examined until approximately three weeks after the sexual assault due to complications from her surgery. The sexual assault nurse who examined Jenny testified vaginal tissue heals quickly, so a sexual assault victim often does not exhibit any physical signs of trauma. The nurse also testified that eighty-five to ninety-five percent of sexual assault victims have "normal examinations," which do not reflect any injuries, trauma, or abnormalities, and that DNA only lasts in and on the body for a limited time.

When viewed in the light most favorable to the verdict, the jury, as a rational trier of fact, could have determined the essential elements of the offense of aggravated sexual assault of a child under fourteen were met beyond a reasonable doubt. *See Jackson*, 443 U.S. at 318–19; *Harrell*, 620 S.W.3d at 913–14. Therefore, we find no merit in Flores's sufficiency challenge, and we overrule Flores's first issue. *See Poindexter v. State*, 153 S.W.3d 402, 405 (Tex. Crim. App. 2005) (citing *Jackson*, 443 U.S. at 318–19).

III. THE TRIAL COURT'S JUDGMENT

A. Flores's second issue

In his second issue, Flores asserts, and the State agrees, that the trial court's judgment incorrectly reflects he entered a plea of "guilty." Flores is correct; the record shows he entered a plea of "not guilty."

This Court has the power to modify a judgment to speak the truth when it has the necessary information to do so. *See* TEX. R. APP. P. 43.2(b); *Bigley v. State*, 865 S.W.2d 26, 27–28 (Tex. Crim. App. 1993); *Asberry v. State*, 813 S.W.2d 526, 529 (Tex. App.—Dallas 1991, pet ref'd) (en banc). Because the record unambiguously indicates that Flores entered a plea of "not guilty" to the charged offense, we modify the judgment to correct the error. We sustain Flores's second issue.

B. The State's cross points

The State raises three cross points likewise requesting modification of the judgment. The record supports the requested modifications and we, therefore, agree the judgment must be modified. We sustain the State's three cross points.

1. The judgment should contain an affirmative finding that the victim was younger than fourteen years of age at the time of the offense.

In the State's first cross point, it requests the judgment be modified to include a special finding that the victim was younger than fourteen at the time of the offense. The code of criminal procedure requires that, in a trial of a sexually violent offense such as this one, the judge shall make an affirmative finding of fact and enter the affirmative finding in the judgment in the case if the judge determines that the victim or intended victim was younger than fourteen years of age at the time of the offense.

See TEX. CODE CRIM. PROC. ANN. art. 42.015(b). A "sexually violent offense" includes aggravated sexual assault "committed by a person 17 years of age or older." *See id.* art. 62.001(6)(A).

The record shows that Flores was born on August 17, 1996, and the abuse took place in November 2020, making Flores twenty-four years old at the time of the offense. The record also reflects that Jenny was six years old when Flores sexually assaulted her. Thus, the facts demonstrate that Flores's sexual assault of Jenny was a sexually violent offense.

Accordingly, we modify the judgment to reflect a finding that the victim "was younger than 14 years of age at the time of the offense." *See id.* art. 42.015(b); *Alexander v. State*, No. 05-18-00784-CR, 2019 WL 3334625, at *6 (Tex. App.—Dallas July 25, 2019, no pet.) (mem. op., not designated for publication). We sustain the State's first cross point.

2. The judgment should reflect the age of the victim pursuant to the sex-offender registration requirements.

In the State's second cross point, the State asks us to modify the sex-offender registration information in the judgment to show the victim was six years old at the time of the offense. Article 42.01 of the Texas Code of Criminal Procedure provides that a judgment for conviction of an offense requiring the defendant to register as a sex offender under Chapter 62 must include "a statement of the age of the victim of the offense." TEX. CODE CRIM. PROC. ANN. art. 42.01, § 1(27). Aggravated sexual

assault is a registrable offense, so the judgment convicting Flores of that offense must reflect the age of the victim. TEX. CODE CRIM. PROC. ANN. art. 62.001(5)(A).

Here, the judgment shows that the sex offender registration requirements apply. The judgment states, "The age of the victim at the time of the offense was N/A." The State asks this Court to replace "N/A" with "6." The record shows Jenny was born January 12, 2014, and she was eight years old at the time of the trial. Further, the record shows Flores assaulted Jenny in November 2020 when Jenny was six years old. We, therefore, modify the judgment to show the age of the victim as "six" at the time of the offense. We sustain the State's second cross point.

3. The judgment should include a finding of family violence pursuant to Texas Code of Criminal Procedure art. 42.013.

In its third cross point, the State argues the judgment should be reformed to reflect an affirmative family violence finding.

Article 42.013 of the Code of Criminal Procedure provides that if a trial court determines an offense under Title 5 of the Penal Code involved family violence, as defined by section 71.004 of the Family Code, the court shall make an affirmative finding of that fact and enter the affirmative finding in the judgment of the case. TEX. CODE CRIM. PROC. ANN. art. 42.013; *see also Butler v. State*, 189 S.W.3d 299, 302 (Tex. Crim. App. 2006) ("[T]he trial court is statutorily obligated to enter an affirmative finding of family violence in its judgment, if during the guilt phase of trial, the court determines that the offense involved family violence as defined by

TEX. FAM. CODE ANN. § 71.004(1).”). Section 71.004(1) of the Family Code provides in part that “[f]amily violence” means “an act by a member of a family or household against another member of the family or household that is intended to result in physical harm, bodily injury, assault, or sexual assault[.]” TEX. FAM. CODE ANN. § 71.004(1). Biological children are “family.” *See id.* at § 71.003.

The court has no discretion in the matter, nor does the prosecutor have the discretion to seek such a finding. *Suiters v. State*, No. 07-13-00352-CR, 2014 WL 4459135, at *1 (Tex. App.—Amarillo Sept. 10, 2014, pet. ref’d) (mem. op., not designated for publication). If the State charges an accused with a crime within the scope of section 71.004 and the evidence supports a verdict that the crime was committed, the statute requires the trial court to enter the finding. *See id.*; *see also Daraghmeh v. State*, No. 05-13-01127-CR, 2014 WL 7269924, at *5 (Tex. App.—Dallas Dec. 22, 2014, no pet.) (mem. op., not designated for publication). The State argues the trial court had the necessary evidence before it to enter an affirmative finding of family violence. We agree.

In the instant case, Flores was convicted of aggravated sexual assault of a child, an offense under Title 5 of the Penal Code. *See* TEX. PEN. CODE ANN. § 22.01(a)(1)(B)(i), (a)(2)(B). The undisputed evidence at trial demonstrated Jenny is Flores’s biological daughter. Thus, Flores’s assault of Jenny constitutes family violence. *See, e.g.*, *Butler*, 189 S.W.3d at 302 (“For the purposes of the Texas Family Code, therefore, appellant and the complainant are ‘family,’ and appellant’s assault

of the complainant constitutes family violence."). Consequently, on this record, we conclude that the trial court was statutorily obligated to enter an affirmative finding of family violence in its judgment of conviction for this offense. *See id.*; TEX. CODE CRIM. PROC. art. 42.013; *see also Suiters*, 2014 WL 4459135, at *1 ("If the State charges an accused with a crime within the scope of § 71.004 and the evidence supports a verdict that the crime was committed, the finding must be entered by the trial court by statute."). We, therefore, conclude the trial court was statutorily obligated to include an affirmative family violence finding in the judgment. Accordingly, we modify the trial court's judgment to include an affirmative finding of family violence. We sustain the State's third cross point.

IV. CONCLUSION

We overrule Flores's sufficiency issue because the evidence is sufficient to support the trial court's judgment convicting Flores of aggravated sexual assault of a child younger than fourteen years of age. We sustain Flores's second issue and the State's three cross points and reform the judgment to show (1) Flores pleaded not guilty to the charged offense, (2) the victim was younger than fourteen years of age at the time of the offense, (3) the victim was six years old at the time of the offense, and (4) an affirmative family violence finding. As reformed, we affirm the trial court's judgment.

The trial court is directed to prepare a reformed judgment that reflects the modifications made in this Court's opinion and judgment in this case. *See Shumate v State*, 649 S.W.3d 240, 244–45 (Tex. App.—Dallas 2021, no pet.).

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/Emily Miskel/
EMILY MISKEL
JUSTICE

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TEX. R. APP. P. 47

Court of Appeals
Fifth District of Texas at Dallas

JUDGMENT

HECTOR GIOVANI FLORESSANCHEZ, Appellant	On Appeal from the 283rd Judicial District Court, Dallas County, Texas Trial Court Cause No. F20-77129.
No. 05-22-01073-CR V.	Opinion delivered by Justice Miskel. Justices Goldstein and Garcia participating.
THE STATE OF TEXAS, Appellee	

Based on the Court's opinion of this date, the judgment of the trial court is **MODIFIED** as follows:

(1) "Plea to Offense: Guilty" is modified to read "Plea to Offense: Not Guilty;"

(2) The following sentence is added to the end of the judgment after "Furthermore, the following special findings or orders apply:" "The Court affirmatively finds that the victim was younger than 14 years of age at the time of the offense."

(3) After "(For sex offender registration purposes only)," the sentence "The age of the victim at the time of the offense was N/A" is modified to read "The age of the victim at the time of the offense was six years old."

(4) The following sentence is added to the end of the judgment after "Furthermore, the following special findings or orders apply:" "The Court affirmatively finds that the offense involved family violence."

As **REFORMED**, the judgment is **AFFIRMED**.

The trial court is **DIRECTED** to prepare a corrected judgment that reflects the modifications made in this Court's opinion and judgment in this case.

Judgment entered this 4th day of October, 2023.