Fourth Court of Appeals
San Antonio, Texas

OPINION

No. 04-22-00567-CR

Alexis **MORGANFIELD**,
Appellant

v.

The **STATE** of Texas,
Appellee

From the 187th Judicial District Court, Bexar County, Texas
Trial Court No. 2021CR1804
Honorable Stephanie R. Boyd, Judge Presiding

Opinion by: Irene Rios, Justice

Sitting: Irene Rios, Justice
Beth Watkins, Justice
Lori I. Valenzuela, Justice

Delivered and Filed: April 24, 2024

AFFIRMED

Appellant Alexis Morganfield challenges his sexual assault of a child conviction based on the affirmative defense of not being more than three years older than the victim. *See* TEX. PENAL CODE ANN. § 22.011(a)(2)(B) (listing elements of the sexual assault of a child offense), (e)(2) (providing affirmative defense when, among other requirements, the actor was not more than three years older than the victim at the time of the offense). We affirm.

BACKGROUND

Morganfield was indicted for sexually assaulting a child, S.V.[1] who was sixteen years old, by having S.V. perform oral sex on him. At the time of the offense, Morganfield, born May 21, 2000, was approximately three years and two months older than S.V., born July 28, 2003. Among his defensive strategies, Morganfield argued that because he was nineteen years old and S.V. was sixteen years old at the time of the offense, he was entitled to the affirmative defense provided in Texas Penal Code section 22.011(e)(2). *See id.* § 22.011(e)(2). The trial court denied his request.

A jury found Morganfield guilty of sexually assaulting a child. *See id.* § 22.011(a)(2). In accordance with the jury's recommendation, the trial court sentenced Morganfield to six years' imprisonment. Morganfield appeals.

MORGANFIELD'S APPELLATE COMPLAINT

In a single issue, Morganfield argues the evidence is insufficient to support his conviction for sexual assault of a child, "due to the three-year age gap." Specifically, Morganfield contends the evidence is insufficient because he was not more than three years older than S.V. at the time of the offense, and thus the affirmative defense applies to him. *See* TEX. PENAL CODE ANN. § 22.011(e)(2). He contends that if the trial court had properly instructed the jury, he would have been acquitted.

SUFFICIENCY OF THE EVIDENCE

A. Standard of Review

When reviewing the sufficiency of the evidence, we determine whether, "'viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.'" *Witcher v. State*, 638 S.W.3d 707,

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[1] To protect the complainant's anonymity, we use an alias to refer to her. *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).

709–10 (Tex. Crim. App. 2022) (quoting *Jackson v. Virginia*, 443 U.S. 307, 319 (1979)). This standard coincides with the jury's responsibility "to resolve conflicts in the testimony, to weigh the evidence, and to draw reasonable inferences from basic facts to ultimate facts." *Jackson*, 443 U.S. at 319.

The factfinder alone judges the weight and credibility of the evidence. *See* TEX. CODE CRIM. PROC. ANN. art. 38.04; *Queeman v. State*, 520 S.W.3d 616, 622 (Tex. Crim. App. 2017). We may not reevaluate the evidence's weight and credibility and substitute our judgment for that of the factfinder. *Queeman*, 520 S.W.3d at 622. We must presume the factfinder resolved any conflicting inferences in favor of the verdict, and we must defer to that resolution. *Montgomery v. State*, 369 S.W.3d 188, 192 (Tex. Crim. App. 2012) (reviewing court must not usurp the jury's role by "substituting its own judgment for that of the jury"); *Brooks v. State*, 323 S.W.3d 893, 899 (Tex. Crim. App. 2010) (reviewing court must not sit as thirteenth juror).

B. Elements of the Offense

As relevant to this case, a person commits the offense of sexual assault of a child if he intentionally or knowingly causes the penetration of the mouth of a child younger than seventeen years of age by his sexual organ. TEX. PENAL CODE ANN. § 22.011(a)(2)(B), (c)(1).

A person acts intentionally with respect to a result of his conduct when it is his conscious objective or desire to cause the result. *Id*. § 6.03(a). A person acts knowingly 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). Intent may generally be inferred from circumstantial evidence such as acts, words, and the conduct of the appellant. *Guevara v. State*, 152 S.W.3d 45, 50 (Tex. Crim. App. 2004).

C. Affirmative Defense to the Offense

1. Morganfield's Request for Affirmative Defense

During the charge conference, Morganfield requested an instruction on the affirmative defense set forth in section 22.011(e)(2), claiming he, nineteen years old at the time, was not more than three years older than S.V., who was sixteen years old at the time. *See* TEX. PENAL CODE ANN. § 22.011(e)(2)(A). The State, on the other hand, objected to the instruction and explained section 22.011(e)(2)(A) did not apply because Morganfield was more than three years older than S.V. as measured from their birth dates. The trial court agreed with the State and denied Morganfield's request.

2. Applicable Law to Section 22.011(e)(2)(A) Affirmative Defense

A defendant is generally entitled to an instruction on any defensive issue raised by the evidence so long as the evidence adduced at trial is sufficient to raise each element of the defense. *See Granger v. State*, 3 S.W.3d 36, 38–39 (Tex. Crim. App. 1999). If the evidence fails to raise every element of a defensive issue, however, the trial court may refuse to grant an instruction requested by the defendant. *See Muniz v. State*, 851 S.W.2d 238, 254 (Tex. Crim. App. 1993); *Stefanoff v. State*, 78 S.W.3d 496, 500 (Tex. App.—Austin 2002, pet. ref'd).

It is an affirmative defense to prosecution for sexual assault of a child under section 22.011(a)(2) if the actor is not more than three years older than the victim, and the victim was fourteen years old or older at the time of the offense. *See* TEX. PENAL CODE ANN. § 22.011(a)(2), (e)(2). S.V. was older than fourteen years old as she was sixteen years old at the time of the offense. Thus, whether the affirmative defense applies depends on the calculation of the three-year age difference provided by the statute.

In a well-reasoned opinion, the Austin Court of Appeals held the three-year time limit is measured from the victim's birth date to the defendant's birth date. *See Brown v. State*, 990 S.W.2d

759, 760 (Tex. App.—Austin 1999, no pet.). Distinguishing *Phillips v. State*—relied on by Morganfield and the defendant in *Brown*—the Austin Court explained that the applicable statute pertaining to children "14 years of age or younger" at issue in *Phillips* was "'intended to protect two distinct groups of children: those who are fourteen years of age and those who are under fourteen'" and thus, the statute applied to children who had not attained their fifteenth birthday. *See Brown*, 990 S.W.2d at 760 (quoting *Phillips v. State*, 588 S.W.2d 378, 380 (Tex. Crim. App. 1979)); *see also* TEX. PENAL CODE ANN. § 1.06 (defining the "computation of age" as "a person attains a specified age on the anniversary of his birthdate"). On the other hand, section 22.011(e)(2), wherein the defendant cannot be more than three years older than the victim, and the victim must also be at least fourteen years of age, "refers to both years of time and years of age." *Brown*, 990 S.W.2d at 760. As such, the Austin Court concluded, "[t]he base point in calculating the three-year time period is the victim's age." *Id*. In contrast, "the words in [section 22.011(e)(2)] referring to the victim, '14 years of age or older,' refer to the victim's age, not a period of time." *Id*.

The Austin Court affirmed the trial court's judgment because the defendant was three years eight months and seven days older than the victim. *See id*. The *Brown* Court clarified that "[t]he holding of *Phillips* has no application in calculating the time period of three years for the affirmative defense in section 22.011(e)" *Id*.; *see also Belcher v. State*, No. 10-05-00001-CR, 2006 WL 348561, *1 (Tex. App.—Waco Feb. 15, 2006, no pet.) (mem. op.) (not designated for publication) (applying the three-year time calculation explained in *Brown* to a similar affirmative defense as provided in section 22.011(e)(2)). We agree.

3. Application of Law to Morganfield's Request

S.V.'s date of birth is July 28, 2003; Morganfield's date of birth is May 21, 2000. The affirmative defense requires that the actor be no more than three years older than the victim and

the victim be age fourteen or older. TEX. PENAL CODE ANN. § 22.011(e)(2)(A). We calculate the age difference between the victim's and the defendant's birth dates. *See Brown*, 990 S.W.2d at 760.

At the time of the offense, March 29, 2020, the age difference between S.V. and Morganfield was three years and sixty-eight days. Therefore, the evidence fails to raise all elements of the affirmative defense. *See Granger*, 3 S.W.3d at 38–39. The trial court did not err by denying Morganfield's requested instruction because he failed to satisfy an element of the applicable affirmative defense. *See Muniz*, 851 S.W.2d at 254; *Stefanoff*, 78 S.W.3d at 500.

D. The State's Evidence

Morganfield and two other males, all unknown to S.V. before the night of the assault, picked up S.V. at her house. After a series of events unrelated to the underlying offense, Morganfield ended up alone with S.V. in the back seat of the car. Morganfield asked S.V. for sex and oral sex, and S.V. declined. Despite S.V. rejecting Morganfield's requests, S.V. testified that Morganfield "eventually pulled out his penis, and he insisted, and I eventually gave in [and performed oral sex on him] because I thought that if I didn't, I wouldn't get home that night." S.V. added that she performed oral sex on Morganfield because she felt she did not have a choice, and she "didn't have a way to get home, and he wasn't taking no for an answer." And while S.V. acknowledged Morganfield did not physically force her to perform oral sex, he "coerced" her, and she did not do it voluntarily. Morganfield later stopped at a gas station, where S.V. ran inside and asked for help. S.V. subsequently spoke with Morganfield, who told her that he "felt bad" without specifying why and offered her $100.

San Antonio Police Department's Detective Ivan Benavides and Officer Christian Sandoval worked on S.V.'s case. S.V. acknowledged to them that she performed oral sex on

Morganfield and that he did not physically force her. Morganfield told Detective Benavides that he did not sexually assault anyone but did not provide a statement when requested.

Linda Witte, a SANE nurse, testified she conducted the SANE exam on S.V. Based on her experience and the elapsed time between the alleged sexual assault and the exam, Witte did not expect to find any physical evidence, which was confirmed by negative DNA results.

Veronica Barta, from Bexar County Pretrial Services, served as one of Morganfield's pretrial supervision officers. According to Barta, Morganfield sent her messages complaining of the terms of his bond and his lack of understanding of how it could be considered sexual assault if "the girl went down on him."

E. Analysis

S.V., a sixteen-year-old at the time of the offense, testified that despite not wanting to perform oral sex on Morganfield, she eventually gave in and did so because she felt she had no choice if she wanted to go home, she felt "coerced," and that Morganfield refused to take "no" for an answer. Moreover, while no evidence suggests Morganfield physically forced S.V. to perform oral sex, the evidence also supports that Morganfield acknowledged he engaged in the sexual act with S.V.

A conviction for sexual assault of a child "is supportable on the uncorroborated testimony of the victim" alone. TEX. CODE CRIM. PROC. ANN. art. 38.07(a); *see Saldivar-Lopez v. State*, 676 S.W.3d 851, 859 (Tex. App.—Corpus Christi–Edinburg 2023, no pet.); *Wishert v. State*, 654 S.W.3d 317, 328 (Tex. App.—Eastland 2022, pet. ref'd). "There is no requirement that the victim's testimony be corroborated by medical or physical evidence." *Gonzalez Soto v. State*, 267 S.W.3d 327, 332 (Tex. App.—Corpus Christi–Edinburg 2008, no pet.) (citing *Lee v. State*, 176 S.W.3d 452, 458 (Tex. App.—Houston [1st Dist.] 2004), *aff'd*, 206 S.W.3d 620 (Tex. Crim. App. 2006)

(noting that "[t]he lack of physical or forensic evidence is a factor for the jury to consider in weighing the evidence")).

S.V. was under the age of seventeen; and, as determined above, Morganfield was more than three years older than S.V. and thus not entitled to the affirmative defense under section 22.011(e)(2). *See* TEX. PENAL CODE ANN. § 22.011(e)(2). Therefore, regardless of whether S.V. assented to performing oral sex on Morganfield, Morganfield's engagement in the sexual act with S.V. itself provides sufficient evidence to support the conviction. *See id.*; *Fleming v. State*, 455 S.W.3d 577, 582 (Tex. Crim. App. 2014) (holding there is no culpable mental state with respect to the child's age in a prosecution for sexual assault of a child, which is a strict-liability offense).

After viewing the evidence in the light most favorable to the verdict, we conclude that a rational trier of fact could have found, beyond a reasonable doubt, that Morganfield intentionally or knowingly caused the penetration of S.V.'s mouth by his sexual organ when she was younger than seventeen years old. *See* TEX. PENAL CODE ANN. § 22.011(a)(2)(B); *Jackson*, 443 U.S. at 319; *Witcher*, 638 S.W.3d at 709–10. The evidence is sufficient to support Morganfield's conviction for sexual assault of a child.

CONCLUSION

Because at the time of the offense, Morganfield was more than three years older than S.V., he was not entitled to the affirmative defense instruction under section 22.011(e)(2) of the Texas Penal Code. We conclude the evidence sufficiently supports Morganfield's conviction for sexual assault of a child.

We overrule Morganfield's appellate complaint and affirm the trial court's final judgment.

Irene Rios, Justice

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