AFFIRMED; Opinion Filed June 23, 2016.

In The
Court of Appeals
Fifth District of Texas at Dallas

No. 05-15-00940-CR

VICTOR RODRIGUEZ, Appellant
V.
THE STATE OF TEXAS, Appellee

On Appeal from the 204th Judicial District Court
Dallas County, Texas
Trial Court Cause No. F13-40777-Q

MEMORANDUM OPINION

Before Justices Bridges, Evans, and O'Neill[1]
Opinion by Justice Evans

After a jury trial, Victor Rodriguez was convicted of continuous sexual abuse of a child under fourteen years of age. The jury sentenced him to life imprisonment. In a single issue, appellant complains the evidence is insufficient to support his conviction. After reviewing the record, we disagree. Accordingly, we affirm the trial court's judgment.

BACKGROUND

Complainant G.D. was born in December 1997 and seventeen years old at the time of trial. She testified that appellant, her uncle, performed multiple acts of sexual abuse against her beginning when she was six years old until she was thirteen. The acts included appellant touching her "private area" with his hand, appellant touching her "private area" with his "private

[1] The Hon. Michael J. O'Neill, Justice, Assigned

area" when they both had their clothes off, oral sex that appellant performed on her "private area," and oral sex appellant made G.D. perform on his "private area." G.D. indicated the abuse began after she and her family moved from Mexico to McKinney and lived at her aunt and appellant's home. In addition to instances of abuse that occurred in the McKinney home, G.D. testified to acts of abuse that occurred later, after her aunt and appellant moved to Mesquite. G.D. stated that she moved into her aunt and appellant's home in Mesquite, along with other family members, when she was about eight years old and in the third grade. She detailed several instances of abuse that occurred in the Mesquite home, including a time in appellant's bedroom and another time in a workroom when appellant's private area was touching her private area. She also described an instance of oral sex that occurred in the closet of the workroom, testifying that appellant would always put her in the closet for that.

G.D. lived in the Mesquite home for three years before she moved with her mother and siblings to an apartment in Mesquite. G.D. indicated that although the abuse continued while she lived in the apartment, it always occurred at appellant's house. In addition to the other acts of abuse she described, she recounted one incident of abuse where she and appellant were in his bedroom in the Mesquite house and he put on a condom before their private areas touched. G.D. testified that appellant did not wear a condom the other times. G.D. told her mother about the abuse when she was thirteen. G.D. was never alone with appellant again.

G.D.'s mother confirmed that G.D. and her family moved to McKinney to live with her sister and appellant when G.D. was six years old. She testified that she and her children moved out of the McKinney home to an apartment in Dallas when G.D. was 7 or 8. They lived in Dallas for about a year and a half before moving into her sister and appellant's home in Mesquite. The family lived with her sister and appellant for about three years before moving to their own apartment in Mesquite. G.D.'s mother also confirmed that when G.D. was thirteen,

she reported to her mother that appellant sexually abused her from age six to age thirteen. G.D. told her mother that appellant would touch her private area with his hands and mouth and would put his private area in her mouth. G.D. did not want her mother to say anything about what appellant had been doing because she was embarrassed and did not want to cause problems in the family. The jury also heard testimony from G.D.'s mentor with Big Brothers Big Sisters whom G.D. told about the sexual abuse,[2] an investigator with Child Protective Services, a forensic interviewer, and a sexual assault nurse examiner. Appellant did not testify or present any evidence on his own behalf.

ANALYSIS

In his sole issue, appellant contends the evidence is insufficient to support his conviction because much of the abuse occurred before the enactment of the statute creating the offense for which he was convicted.[3] He argues that because the State failed to provide specific dates for abuse occurring after September 1, 2007, when the statute was enacted, the evidence is insufficient to uphold his conviction. When an appellant challenges the legal sufficiency of the evidence, we consider the entire record in the light most favorable to the verdict to determine whether any rational trier of fact could have found the appellant guilty of the essential elements of the offense beyond a reasonable doubt. *See Jackson v. Virginia*, 443 U.S. 307, 319 (1979); *Dobbs v. State*, 434 S.W.3d 166, 170 (Tex. Crim. App. 2014).

To convict a person of continuous sexual abuse of a child under fourteen, the State must prove beyond reasonable doubt that (1) during a period of thirty days or more in duration, the defendant committed at least two acts of "sexual abuse," whether or not the acts were committed

[2] G.D. was fifteen years old and in high school when she told the BBBS mentor about the sexual abuse.

[3] Although appellant appears to raise a factual insufficiency issue, we apply the *Jackson v. Virginia* legal sufficiency standard to determine whether the evidence was sufficient to support each element of the charged offense beyond a reasonable doubt. *See Brooks v. State*, 323 S.W.3d 893, 895 (Tex. Crim. App. 2010) (plurality op.) (*Jackson* legal sufficiency standard is only standard for determining evidentiary sufficiency).

against the same victim, and (2) for each act, the defendant was at least seventeen years old and the victim was less than fourteen years old. *See* TEX. PENAL CODE ANN. § 21.02(b) (West 2015). The exact dates of the abuse need not be proven. *Brown v. State*, 381 S.W.3d 565, 573–74 (Tex. App.—Eastland 2012, no pet.). And the statute does not require that the jury agree unanimously on the specific acts of sexual abuse appellant committed or the exact dates when those acts were committed. *See* TEX. PENAL CODE ANN. § 21.02(d).

Although there was testimony indicating that the abuse began in 2004 when G.D. was six, there was also evidence that appellant continued to sexually abuse G.D. from that time until 2011, when she was thirteen years old. Specifically, there was evidence of multiple acts of abuse that occurred when G.D. lived in appellant's Mesquite home for three years, beginning in 2006 or 2007 and continuing until 2009 or 2010.[4] G.D. acknowledged incidents of genital contact and oral sex occurred while she was living in Mesquite with her aunt and appellant. Moreover, G.D. testified that after she moved out of the home to an apartment in Mesquite in 2009 or 2010, appellant continued to take her to his Mesquite home and sexually abuse her. She detailed a separate incident of abuse in which appellant used a condom for the first time. The nurse examiner's testimony and report was also consistent with other evidence that G.D. was sexually abused by appellant from age six to thirteen and that the last incident of abuse occurred in 2011.

After reviewing the record under the applicable standard, we conclude the evidence was sufficient to support appellant's conviction. Although there was no evidence as to the specific dates the numerous instances of sexual abuse occurred, the jury could have reasonably inferred from the facts presented that appellant sexually abused G.D. at least twice between September 1,

[4] G.H.'s mother testified that she and her children moved from McKinney to an apartment in Dallas when G.H. was seven or eight. According to G.H.'s mother, the family lived in the Dallas apartment for a year and a half before moving into her sister's home in Mesquite. This evidence suggests the family could have moved to Mesquite sometime in 2008, when G.H. was ten.

2007, when she was about nine years and nine months old and before she turned fourteen in December 2011.

In reaching our conclusion, we necessarily reject appellant's contention that the evidence was insufficient because (1) appellant's work schedule demonstrated "it would have been virtually impossible for appellant to be alone and have sexual contact with G.D.," and (2) G.D.'s mother never witnessed any behavioral changes in G.D. consistent with someone who was being sexually abused. To the extent appellant challenges the factual sufficiency of the evidence to support his conviction, we have already noted the *Jackson* legal sufficiency standard is the only standard for determining evidentiary sufficiency. *See Brooks*, 323 S.W.3d at 895. Moreover, it was in the exclusive province of the jury to determine the weight and credibility of the evidence referenced by appellant. *See Wise v. State*, 364 S.W.3d 900, 903 (Tex. Crim. App. 2012) (factfinder determines weight and credibility of evidence). When the record supports conflicting inferences, we presume the jury resolved the conflicts in favor of the judgment and give deference to its determination. *Dobbs*, 434 S.W.3d at 170. We resolve appellant's sole issue against him.

CONCLUSION

We affirm the trial court's judgment.

/David Evans/
DAVID EVANS
JUSTICE

Do Not Publish
TEX. R. APP. P. 47
150940F.U05

Court of Appeals
Fifth District of Texas at Dallas

JUDGMENT

VICTOR RODRIGUEZ, Appellant

No. 05-15-00940-CR V.

THE STATE OF TEXAS, Appellee

On Appeal from the 204th Judicial District Court, Dallas County, Texas
Trial Court Cause No. F13-40777-Q
Opinion delivered by Justice Evans, Justices Bridges and O'Neill participating.

Based on the Court's opinion of this date, the judgment of the trial court is **AFFIRMED**.

Judgment entered this 23rd day of June, 2016.