AFFIRM; and Opinion Filed November 27, 2017.

In The
Court of Appeals
Fifth District of Texas at Dallas

No. 05-16-00528-CR

JOSE GARDUNO GUZMAN, Appellant
V.
THE STATE OF TEXAS, Appellee

On Appeal from the 219th Judicial District Court
Collin County, Texas
Trial Court Cause No. 219-80007-2015

MEMORANDUM OPINION

Before Justices Lang-Miers, Brown, and Boatright
Opinion by Justice Brown

Following a jury trial, Jose Garduno Guzman appeals his convictions for continuous sexual abuse of a child and indecency with a child by sexual contact. In two issues, appellant contends (1) the trial court erred in allowing a witness to testify about the reasons for delayed outcry in child sexual abuse cases, and (2) the evidence is insufficient to support the convictions. We affirm the trial court's judgments.

BACKGROUND

A single indictment charged appellant with both continuous sexual abuse of a young child and indecency with a child. Count I alleged that during a period that was thirty days or more in duration, appellant committed two or more acts of sexual abuse against L.O. and at the time of the commission of each act, appellant was seventeen years of age or older and L.O. was a child younger than fourteen. *See* TEX. PENAL CODE ANN. § 21.02(b) (West Supp. 2016). The

indictment alleged five different acts of sexual abuse, three acts constituting indecency with a child and two constituting aggravated sexual assault. *See id.* § 21.02(c). Count II alleged appellant intentionally and knowingly, with intent to arouse and gratify the sexual desire of any person, engaged in sexual contact by touching the breast of L.O., a child younger than seventeen and not appellant's spouse, by means of his hand. *See id.* § 21.11(a)(1), (c)(1) (West 2011).

At trial, L.O.'s maternal grandmother testified that she has primary custody of L.O., who was born in December 2000. When L.O. was one-and-a-half years of age, Grandmother started a relationship with appellant. Grandmother and appellant had a son together in August 2004, but separated soon after he was born. Grandmother saw appellant from time to time because of their son. In 2007, after Grandmother got sick and her mother passed away, appellant stayed with Grandmother in her home for periods of time to help out.

When L.O. was in fifth grade, Grandmother saw appellant kissing L.O. on the lips at the house. Grandmother said something about it, and L.O. looked scared and denied that appellant had kissed her. Appellant told Grandmother she was "seeing wrong" and treated her like a liar. Grandmother did not call the police because she was not positive about what she had seen. She instead kept a closer eye on L.O. and stopped taking medication that made her groggy. Once appellant saw that Grandmother was no longer taking the medication, he did not stay at her house as often and soon moved out for good.

L.O. was fifteen years' old and in ninth grade at the time of trial. She testified that when she was in grades three through five appellant lived in her home and was there most nights. She was in third grade the first time appellant touched her inappropriately and in fifth grade the last time he did so. L.O. described at least eight acts of sexual abuse appellant committed against her during this time frame. We do not recount the details of these acts as they are not pertinent to the specific sufficiency challenge appellant makes in this appeal. L.O. also described one instance

when appellant touched her breasts with his hand. All of the incidents occurred before L.O. turned fourteen.

After the abuse stopped, L.O. continued to think about what appellant had done, and in eighth grade, she became depressed. Grandmother became aware of L.O.'s depression and took her to a hospital. Eventually, L.O. was evaluated at a mental health facility in Plano, where she told a child psychiatrist of the abuse. Following that, L.O. had a forensic interview at the Children's Advocacy Center of Collin County, which led to appellant's arrest.

The jury found appellant guilty of continuous sexual abuse of a young child and indecency with a child. It assessed appellant's punishment at thirty years' confinement and five years' confinement, respectively. This appeal followed.

SUFFICIENCY OF THE EVIDENCE

Because appellant's sufficiency challenge would be dispositive of his appeal if meritorious, we address his second issue first. Appellant contends the evidence is insufficient to support either conviction. When reviewing the sufficiency of the evidence, we consider all of the evidence in the light most favorable to the verdict to determine whether, based on that evidence and the reasonable inferences therefrom, a factfinder was rationally justified in finding guilt beyond a reasonable doubt. *Temple v. State*, 390 S.W.3d 341, 360 (Tex. Crim. App. 2013); *see Jackson v. Virginia*, 443 U.S. 307, 318–19 (1979). The factfinder is the sole judge of the credibility of the witnesses and the weight to be given their testimony. *Temple*, 390 S.W.3d at 360. We will not second-guess the jury's assessment of the credibility and weight of witness testimony. *See Balderas v. State*, 517 S.W.3d 756, 766 (Tex. Crim. App. 2016). The testimony of a child victim alone is sufficient to support a conviction for continuous sexual abuse of a child or for indecency with a child. TEX. CODE CRIM. PROC. ANN. art. 38.07 (West Supp. 2016); *Lee v. State*, 186 S.W.3d 649, 655 (Tex. App.—Dallas 2006, pet. ref'd).

Appellant asserts no rational trier of fact could have found the elements of the offenses beyond a reasonable doubt based on a "years-delayed outcry" of a single child witness. Appellant does not argue that the State failed to present evidence of any particular element of either offense. Rather, he contends the evidence is insufficient because L.O.'s testimony was not corroborated and was "totally unsupported by any scientific or real expert evidence." The closest thing to corroboration, he argues, was Grandmother's testimony that appellant once attempted to kiss L.O. He notes the State did not call as witnesses L.O.'s younger siblings who were nearby when some of the acts occurred.

Any lack of corroboration does not make the evidence insufficient. L.O.'s testimony alone is sufficient to support the convictions. *See* CODE CRIM. PROC. ANN. art. 38.07. The jury believed L.O.'s testimony, and we defer to its determination of her credibility. For both offenses, the jury was rationally justified in finding appellant's guilt beyond a reasonable doubt. We overrule appellant's second issue.

ADMISSION OF EVIDENCE

In his first issue, appellant contends the trial court erred in allowing Michelle Schuback to testify as an expert and offer an opinion on the reasons a child would delay outcry. He contends the State did not establish that Schuback was qualified to testify on the subject.

The State presented Schuback, the director of case management at the Children's Advocacy Center, as an expert on how forensic interviews are conducted. Schuback's testimony came prior to L.O.'s. Among other things, she testified it was very common for children not to outcry immediately after sexual abuse. When the prosecutor asked her why children delayed, appellant objected that the question "calls for psychological expertise" and speculation. The court overruled the objection. Schuback then testified there are a number of reasons children delay disclosure of abuse, including shame and guilt, lack of understanding that what happened

was wrong, fear of the perpetrator, love for the perpetrator, or wanting to protect other family members.

If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, expertise, training, or education may testify thereto in the form of an opinion or otherwise. TEX. R. EVID. 702; *Rodgers v. State*, 205 S.W.3d 525, 527 (Tex. Crim. App. 2006). Expert testimony may be admitted to explain general behavioral characteristics of child sexual abuse victims as a class, including to explain delayed outcry. *Kirkpatrick v. State*, 747 S.W.2d 833, 835–36 (Tex. App.—Dallas 1987, pet. ref'd). Because the possible spectrum of education, skill, and training is so wide, a trial court has great discretion in determining whether a witness possesses sufficient qualifications to assist the jury as an expert on a specific topic in a particular case. *Rodgers*, 205 S.W.3d at 527–28.

Schuback testified that, as the director of case management, she supervises several programs at the advocacy center, including the forensic interview program. She has a bachelor's degree in child development and a master's degree in social work and is a licensed clinical social worker. At the time of trial, she had worked for the advocacy center for thirteen years. She had conducted forensic interviews since 2002 and had conducted about 3,000 of them. She testified about the training she had and continues to receive. Based upon Schuback's education, training, and experience conducting forensic interviews, we cannot conclude the trial court abused its discretion in determining that Schuback possessed the necessary expertise to testify about the reasons a child would delay making an outcry of sexual abuse. *See Rojas v. State*, No. 02-15-00144-CR, 2016 WL 6648748, at *3–4 (Tex. App.—Fort Worth Nov. 10, 2016, pet. ref'd) (mem. op., not designated for publication) (forensic interviewer was qualified by her education, training, and experience to testify about delayed outcries).

Appellant also argues the testimony was inadmissible for other reasons he did not present to the trial court. He contends Schuback's testimony was irrelevant because it failed to address the reasons for delay in this case. Further, appellant asserts the testimony was improper because it was "argumentative, opinionated, and bolstering in nature." In the trial court, appellant complained only that asking Schuback about the reasons for delay called for psychological expertise and for speculation. To preserve a complaint for appellate review, a party must have presented a timely objection or motion to the trial court stating the specific grounds for the ruing desired. *See* TEX. R. APP. P. 33.1(a). By not raising these objections at trial, appellant has failed to preserve these complaints for our review. We overrule appellant's first issue.

We affirm the trial court's judgments.

/Ada Brown/
ADA BROWN
JUSTICE

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Court of Appeals
Fifth District of Texas at Dallas

JUDGMENT

JOSE GARDUNO GUZMAN, Appellant	On Appeal from the 219th Judicial District Court, Collin County, Texas
No. 05-16-00528-CR V.	Trial Court Cause No. 219-80007-2015.
	Opinion delivered by Justice Brown, Justices
THE STATE OF TEXAS, Appellee	Lang-Miers and Boatright participating.

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

Judgment entered this 27th day of November, 2017.