AFFIRM; and Opinion Filed November 29, 2017.

In The
Court of Appeals
Fifth District of Texas at Dallas

No. 05-16-01245-CR

SON T. NGUYEN, Appellant
V.
THE STATE OF TEXAS, Appellee

On Appeal from the 219th Judicial District Court
Collin County, Texas
Trial Court Cause No. 219-83456-2015

MEMORANDUM OPINION

Before Justices Lang, Brown, and Whitehill
Opinion by Justice Brown

Following a jury trial, appellant Son T. Nguyen appeals his conviction for aggravated sexual assault of a child. In a single issue, appellant contends the evidence is legally insufficient to support the jury's guilty verdict. Because there was sufficient evidence to prove appellant committed the offense, we affirm he trial court's judgment.

Appellant was charged under section 22.021 of the penal code with aggravated sexual assault of a child. *See* TEX. PENAL CODE ANN. § 22.021(a)(1)(B)(iii) & (a)(2)(B) (West 2011). The indictment alleged appellant intentionally and knowingly caused the female sexual organ of M.R., a child younger than six years of age and not the spouse of appellant, to contact the mouth of appellant.

At trial, L.P. testified that she took her five-year-old daughter M.R. to the babysitter's house in August 2015. When L.P. picked up M.R. that evening, M.R. was holding her private

part and said her "dit hurted." "Dit" is a Vietnamese term for private part. When L.P. asked what had happened, M.R. continued to hold her private part, stated "Ong been doing this to me," and then stuck her tongue our and moved it from side to side. M.R. referred to the babysitter's boyfriend as "Ong," a Vietnamese term for grandpa, and L.P. identified appellant as Ong in court.

L.P. identified appellant as the babysitter's boyfriend, whom L.P. entered the babysitter's house and asked M.R. again what had happened in front of both the babysitter and Ong. M.R. repeated what she had said. According to L.P., Ong tried to avoid the subject. Before leaving, L.P. took M.R. to use the bathroom. L.P. noticed a small, unusual amount of liquid in M.R.'s panties.

L.P. was concerned and took M.R. to a nearby pediatric clinic after leaving the babysitter's house. The clinic personnel directed her to Children's Hospital of Plano, where a physician examined M.R. later that night. The physician collected swabs from M.R.'s genital area and panties, and subsequent DNA testing of the swabs revealed that appellant could not be excluded as a source of male DNA recovered from both M.R.'s genitals and panties. L.P. gave a written statement to a detective at the hospital.

M.R. underwent forensic interviews at the Children's Advocacy Center of Collin County a few days later. Detective Danny Bryeans watched the interview live on a closed circuit. Bryeans testified that M.R. was able to state who committed the offense during the interview, and Bryeans determined that she was talking about appellant.

At trial, M.R. testified that no one had ever touched any part of her body with their tongue, indicated that she had never met appellant, and said "me" when asked if she ever called anybody "Ong." She further testified that she remembered talking about "something different" in a video, but she did not want to talk about it.

In his sole issue, appellant contends the evidence is insufficient to support his conviction because M.R.'s trial testimony, including that she had never seen appellant, negated her outcry. 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). As factfinder, the jury judges the credibility of the witnesses and can choose to believe all, some or none of a witness's testimony. *Chambers v. State*, 805 S.W.2d 459, 461 (Tex. Crim. App. 1991).

The testimony of an outcry witness alone is sufficient to support a conviction. *Rodriguez v. State*, 819 S.W.2d 871, 873-74 (Tex. Crim. App. 1991). Even when a complainant recants her outcry statements, the jury, as the sole judge of the credibility of the witnesses, is entitled to determine whether to believe the prior statements or the recantations. *Chambers*, 805 S.W.2d at 461. A complainant's recantation of an earlier outcry statement does not destroy the probative value of the statement. *Id.*

Standing alone, an uncertain in-court identification of an accused as the perpetrator of a crime will not support a jury verdict. *Anderson v. State*, 813 S.W.2d 177, 179 (Tex. App.—Dallas 1991, no pet.). However, if other evidence corroborates an equivocal identification, the evidence will not be considered insufficient. *Id.*; *see also Purkey v. State*, 656 S.W.2d 519, 520 (Tex. App.—Beaumont 1983, pet. ref'd). In that case, the complainant's failure to identify the defendant in court goes only to the weight and credibility of the complainant's testimony. *Meeks v. State*, 897 S.W.2d 950, 955 (Tex. App.—Fort Worth 1995, no pet.); *Anderson*, 813 S.W.2d at 179.

The evidence is sufficient to prove appellant's identity as the person who committed aggravated sexual assault of a child. The record reflects that L.P. identified appellant in court as Ong. Detective Bryeans testified that he was able to determine that M.R. was talking about appellant as the person who committed the offense during her forensic interview. L.P. also provided outcry testimony that M.R. was holding her private part when she picked her up from the babysitter's house. M.R. complained her private part hurt, demonstrated licking motions with her tongue, and said "Ong been doing this to me." This outcry testimony alone is sufficient to support the conviction. The conviction is further supported by evidence that appellant could not be excluded as a source of male DNA recovered from M.R.'s genitals and panties. That M.R. was unable or unwilling to identify appellant and testify about the assault in court went only to her credibility, and we defer to the jury's credibility determinations. We overrule appellant's sole issue.

We affirm the trial court's judgment.

/Ada Brown/
ADA BROWN
JUSTICE

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JUDGMENT

SON T. NGUYEN, Appellant

No. 05-16-01245-CR V.

THE STATE OF TEXAS, Appellee

On Appeal from the 219th Judicial District Court, Collin County, Texas
Trial Court Cause No. 219-83456-2015.
Opinion delivered by Justice Brown; Justices Lang and Whitehill participating.

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

Judgment entered this 29th day of November, 2017.