Affirmed and Opinion Filed October 15, 2020

In The

Court of Appeals

Fifth District of Texas at Dallas

No. 05-19-00745-CR

MIGUEL ANGEL CASTELLANOS, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the 296th Judicial District Court
Collin County, Texas
Trial Court Cause No. 296-82163-2017

MEMORANDUM OPINION

Before Justices Myers, Nowell, and Evans
Opinion by Justice Nowell

A jury convicted Miguel Angel Castellanos of continuous sexual abuse of a child and sentenced him to incarceration for life without parole. In two issues, appellant argues the trial court erred by admitting a timeline of dates related to the specific allegations of sexual abuse and the evidence is insufficient to support the conviction. We affirm the trial court's judgment.

FACTUAL BACKGROUND

The complainants, M.G. and M.W., are appellant's wife's grandchildren. M.G. was born in May 2003. She testified that when she was nine years old, her family lived with appellant and her grandmother. M.G. described events that

occurred while her family lived with appellant. Her testimony included descriptions of appellant removing her clothing and touching her vagina with his fingers, removing her clothing and rubbing his penis against her "lower part," and forcing her to touch and rub his penis with her hands. Appellant told M.G. not to tell anyone about the assaults because he could go to jail.

M.W. was born in April 2001. She testified she was at appellant's house when she was "about nine" years old. Appellant instructed her to remove her clothing and, as she did so, appellant removed his clothing. Appellant pushed M.W. on to a bed and, she testified, "he put his penis inside of me." She testified that he penetrated her anus. On several other occasions, appellant forced M.W. to rub his penis over his clothing. And once, when she was nine or ten years old, appellant removed her underwear and licked her vagina.

Appellant was born in 1975 and was over the age of seventeen when these events occurred.

LAW & ANALYSIS

A. Admission of State's Exhibit 2

In his first issue, appellant argues the trial court abused its discretion by admitting State's Exhibit 2. State's Exhibit 2 is a timeline created by the State with facts related to the case. In typed font, the timeline includes the dates M.G. and M.W. were born, when each girl turned nine years old and ten years old, when M.W. turned eleven years old, and when the complainants outcried. During trial, as the

complainants testified about the specific assaults, the prosecutor added handwritten entries to the timeline to demonstrate where the assaults fit within the timelines of their lives.

The State offered its Exhibit 2 twice during trial. The State first offered Exhibit 2 for demonstrative purposes only. When the State initially offered its timeline, the document only included the typed dates and corresponding events such as dates when each complainant was born, when she turned nine, and when she turned ten; the timeline did not show the handwritten notes reflecting when appellant assaulted the complainants. Appellant objected on several grounds to the admission of State's Exhibit 2 for demonstrative purposes only, and the trial court overruled the objections. The State later offered Exhibit 2, which now included the handwritten entries showing the assaults, for all purposes. At that time, appellant's counsel responded: "No objection, Your Honor." State's Exhibit 2 was admitted for all purposes.

Preservation of error is a systemic requirement, and this Court has a duty to ensure a claim is properly preserved before we address its merits. *See Darcy v. State*, 488 S.W.3d 325, 327-28 (Tex. Crim. App. 2016). To properly preserve a complaint for appeal, the record must show that the complaining party made a timely request, objection, or motion that identified the grounds for the ruling sought from the trial court with sufficient specificity to make the trial court aware of the complaint. TEX. R. APP. P. 33.1(a). Where a party states he has "no objection" to evidence and the

record does not show whether an abandonment of a prior objection was intended or understood, a "no objection" statement waives an earlier-preserved error. *See Thomas v. State*, 408 S.W.3d 877, 885–86 (Tex. Crim. App. 2013); *see also Hernandez v. State*, No. 05-16-00599-CR, 2017 WL 2871428, at *8 (Tex. App.—Dallas July 5, 2017, pet. ref'd) (mem. op., not designated for publication). If after reviewing the entire record, "it remains ambiguous whether waiver was intended, the court should resolve the ambiguity in favor of a finding of waiver." *Stairhime v. State*, 463 S.W.3d 902, 906 (Tex. Crim. App. 2015); *see also Barnes v. State*, No. 05-16-01184-CR, 2017 WL 5897746, at *3 (Tex. App.—Dallas Nov. 29, 2017, no pet.) (mem. op., not designated for publication).

Although appellant initially objected to State's Exhibit 2 when offered for demonstrative purposes, when the State subsequently offered its modified Exhibit 2 for all purposes, appellant's counsel affirmatively stated he had "no objection." Nothing in the record demonstrates appellant did not intend his "no objection" statement to constitute an abandonment of his earlier objection. *See Stairhime*, 463 S.W.3d at 906. Therefore, based on this record, we conclude appellant waived any error to the admission of State's Exhibit 2. We overrule appellant's first issue.

B. Sufficiency of the Evidence

In his second issue, appellant argues the evidence is insufficient to support his conviction for continuous sexual abuse of a child. Specifically, he argues the State

failed to prove thirty days or more elapsed between two or more incidents of sexual abuse.

We review a challenge to the sufficiency of the evidence on a criminal offense for which the State has the burden of proof under the single sufficiency standard set forth in *Jackson v. Virginia*, 443 U.S. 307 (1979). *Acosta v. State*, 429 S.W.3d 621, 624–25 (Tex. Crim. App. 2014). Under this standard, the relevant question is whether, after viewing the evidence in the light most favorable to the verdict, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. *Clayton v. State*, 235 S.W.3d 772, 778 (Tex. Crim. App. 2011). This standard accounts for the factfinder's duty to resolve conflicts in the testimony, to weigh the evidence, and to draw reasonable inferences from basic facts to ultimate facts. *Id.* Therefore, in analyzing legal sufficiency, we determine whether the necessary inferences are reasonable based upon the combined and cumulative force of all the evidence when viewed in the light most favorable to the verdict. *Id.*

As applicable in this case, a person commits the offense of continuous sexual abuse of a child if, during a period that is thirty days or more in duration, the person commits two or more acts of sexual abuse (regardless of whether the acts of sexual abuse are committed against one or more victims) and, at the time of the commission of each of the acts of sexual abuse, the actor is 17 years of age or older and the victim is a child younger than 14 years of age, regardless of whether the actor knows the age of the victim at the time of the offense. TEX. PENAL CODE § 21.02(b).

M.G. and M.W. each testified to numerous acts of sexual abuse that occurred when each of them was nine years old. Appellant was over seventeen years old at the time of the events they described. Because the girls are two years apart in age, and they were both abused when they were nine years old, there is sufficient evidence for a jury to conclude appellant committed two or more acts of sexual abuse during a period of thirty days or more. Further, viewing all the evidence in the light most favorable to the verdict, we conclude any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. We overrule appellant's second issue.

CONCLUSION

We affirm the trial court's judgment.

/Erin A. Nowell/
ERIN A. NOWELL
JUSTICE

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TEX. R. APP. P. 47.2(b)
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Court of Appeals
Fifth District of Texas at Dallas

JUDGMENT

MIGUEL ANGEL CASTELLANOS, Appellant No. 05-19-00745-CR V. THE STATE OF TEXAS, Appellee	On Appeal from the 296th Judicial District Court, Collin County, Texas Trial Court Cause No. 296-82163-2017. Opinion delivered by Justice Nowell. Justices Myers and Evans participating.

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

Judgment entered this 15th day of October, 2020.