Opinion issued December 2, 2010

In The

Court of Appeals

For The

First District of Texas

Nos. 01-09-00285-CR
01-09-00286-CR
01-09-00287-CR

TIMOTHY JAMES ANGLIN, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the 240th District Court
Fort Bend County, Texas
Trial Court Case No. 46653, 46654, 46655

MEMORANDUM OPINION

Appellant, Timothy James Anglin, appeals from a judgment convicting him on three counts of aggravated sexual assault of a child. *See* TEX. PENAL CODE

ANN. § 22.021 (Vernon Supp. 2010). Appellant pleaded not guilty to each offense. The trial court found him guilty of each offense and sentenced him to three consecutive terms of life in prison. In two issues, appellant contends that the evidence is legally and factually insufficient to establish his guilt. We conclude that the evidence is sufficient. We affirm.

Background

Before moving to Arkansas when she was around ten years old, complainant lived in Houston, Texas, and Richmond, Texas, with her two brothers, her mother, her three sisters, and her stepfather. From about September 1993, when complainant was five years old, until September or December 1994, when complainant was six or seven years old, complainant and her family lived with appellant and his future wife.

Complainant testified that she was sometimes alone with appellant and that he would sometimes take her to houses where he cleaned pools. Appellant took complainant with him to clean pools on more than one occasion. On one of these trips, appellant took complainant to an abandoned house where he instructed her to crawl through a window at the back of the house and unlock the front door for him to come inside. Appellant told complainant to take her clothes off and lie down in the doorway to a bathroom. Appellant got on his hands and knees, pushed complainant's legs apart, and put his mouth on her female sexual organ.

Complainant testified that this was not the first time that appellant had done this and that each incident lasted only "for a little bit." In the instance described by complainant, appellant also put his fingers inside her female sexual organ.

Complainant also said that she was on the bed in the bedroom of the same house at some point, but she could not remember whether that was the same instance described above or a separate occasion. When complainant was on the bed, appellant "stuck his penis in [her] mouth." During the same occasion, appellant also put his mouth on complainant's female sexual organ and penetrated her female sexual organ with his fingers. Appellant then told complainant that he would kill her if she told anyone what had happened. Complainant testified that, although she did not know the exact location of the house where the events described above took place, she knew that "it was within driving distance. It wasn't very far." Complainant also stated that appellant engaged in similar behavior "another time [in] the house in the attic." Complainant also described the incident "in the attic," but could only describe the house where this incident occurred as a "two-story. It was white, old looking." This event took place at a house separate from the house where the two assaults described above occurred. Complainant stated:

> He took me into the abandoned house and we walked up to the attic and it was the same as every other time. He made me take my clothes off and lay down on the ground on my back facing up and he would take—he would take his pants down and he would tell me to take my

> pants off. Sometimes he would help but he mostly would make me take my pants off, and he would kneel down and then spread my legs and put his mouth on my vagina.

Complainant testified that she was under the age of fourteen when appellant assaulted her and that she was not appellant's spouse. Complainant then confirmed that appellant's male sexual organ penetrated her mouth at the time when "he made [her] sit on the bed," that appellant's finger penetrated her female sexual organ during that same incident or during a separate incident in what she believed to be the same house, and that appellant also put his mouth on her female sexual organ.

Complainant testified that, when she was younger, she did not tell anyone what appellant had done to her because she was afraid that he would kill her as he had threatened to do. Complainant identified appellant as the man who had assaulted her.

Complainant stated that, when she was sixteen or seventeen years old, her mother woke her up one night and asked if appellant had "ever done anything" to her. On that night, complainant described to her mother and stepfather the events she described in court. Later, complainant gave a written statement to a sheriff's office in Ohio.

The complainant's mother explained that appellant was the best friend of her ex-husband. Sometime in late 1993, the complainant's mother and her children, including complainant, moved in with appellant and his future wife in Richmond,

Fort Bend County, Texas. They remained there until sometime between September and December of 1994. At that time, appellant was employed by a pool cleaning company. The complainant's mother allowed her children to accompany appellant every once in a while when he went to work so that they could swim while he cleaned the pool. The complainant's mother testified that she trusted appellant with her children. Sometimes appellant would take complainant without anyone else.

Appellant presented testimony in his defense during the guilt-innocence phase of trial. Scott Anglin, appellant's uncle, testified he worked at the same company as appellant. He testified that the company's policy did not allow their employees to have passengers in the company trucks. He also testified that he never saw complainant or anyone else in the truck with appellant.

Appellant's wife testified that she lived in the house in Richmond with complainant's mother and her children. At that time, appellant was working for the pool cleaning company. Appellant's wife also testified that appellant never took complainant anywhere in his work truck, his personal truck, or on his motorcycle and that he never took complainant swimming.

In trial court cause number 46653, appellate number 01-09-00285-CR, appellant was convicted of aggravated sexual assault of a child for intentionally and knowingly contacting and penetrating complainant's mouth with his sexual

organ. In trial court cause number 46654, appellate number 01-09-00286-CR, appellant was convicted of aggravated sexual assault of a child for intentionally and knowingly contacting complainant's sexual organ with his mouth. In trial court cause number 46655, appellate number 01-09-00287-CR, appellant was convicted of aggravated sexual assault of a child for intentionally and knowingly penetrating complainant's sexual organ with his finger.

Sufficiency of the Evidence

In his two issues, appellant challenges the legal and factual sufficiency of the evidence to establish (1) his guilt for the offenses of aggravated sexual assault of a child, (2) that venue in Fort Bend County was proper, and (3) the dates of the offense.

A. Proof of Guilt of Aggravated Sexual Assault

Appellant challenges the legal and factual sufficiency of the evidence to prove his guilt for the offenses of aggravated sexual assault of a child by asserting that the uncorroborated testimony of complainant is not sufficient to support his convictions.

1. Standard of Review

This Court now reviews both legal and factual sufficiency challenges using the same standard of review. *Ervin v. State*, No. 01-10-00054-CR, 2010 WL 4619329, at *2–4 (Tex. App.—Houston [1st Dist.] Nov. 10, 2010, pet. filed)

(construing majority holding of *Brooks v. State*, PD-0210-09, 2010 WL 3894613, at *14, *21–22 (Tex. Crim. App. Oct. 6, 2010)). Under this standard, evidence is insufficient to support a conviction if, considering all the record evidence in the light most favorable to the verdict, no rational factfinder could have found that each essential element of the charged offense was proven beyond a reasonable doubt. *See Jackson v. Virginia*, 443 U.S. 307, 319, 99 S. Ct. 2781, 2789 (1979); *In re Winship*, 397 U.S. 358, 361, 90 S. Ct. 1068, 1071 (1970); *Laster v. State*, 275 S.W.3d 512, 517 (Tex. Crim. App. 2009); *Williams v. State*, 235 S.W.3d 742, 750 (Tex. Crim. App. 2007). Viewed in the light most favorable to the verdict, the evidence is insufficient under this standard in two circumstances: (1) the record contains no evidence, or merely a "modicum" of evidence, probative of an element of the offense; or (2) the evidence conclusively establishes a reasonable doubt. *See Jackson*, 443 U.S. at 314, 318 n.11, 320, 99 S. Ct. at 2786, 2789 n.11, 2789; *Laster*, 275 S.W.3d at 518; *Williams*, 235 S.W.3d at 750. Additionally, the evidence is insufficient as a matter of law if the acts alleged do not constitute the criminal offense charged. *Williams*, 235 S.W.3d at 750.

If an appellate court finds the evidence insufficient under this standard, it must reverse the judgment and enter an order of acquittal. *See Tibbs v. Florida*, 457 U.S. 31, 41, 102 S. Ct. 2211, 2218 (1982). An appellate court determines 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. *See Clayton v. State*, 235 S.W.3d 772, 778 (Tex. Crim. App. 2007) (citing *Hooper v. State*, 214 S.W.3d 9, 13 (Tex. Crim. App. 2007). In viewing the record, direct and circumstantial evidence are treated equally; circumstantial evidence is as probative as direct evidence in establishing the guilt of an actor, and circumstantial evidence alone can be sufficient to establish guilt. *Id.* (citing *Hooper*, 214 S.W.3d at 13). An appellate court presumes that the factfinder resolved any conflicting inferences in favor of the verdict and defers to that resolution. *See Jackson*, 443 U.S. at 326, 99 S. Ct. at 2793; *Clayton*, 235 S.W.3d at 778. An appellate court also defers to the factfinder's evaluation of the credibility of the evidence and weight to give the evidence. *See Williams*, 235 S.W.3d at 750.

The testimony of a victim, even when the victim is a child, is alone sufficient to support a conviction for sexual assault. *See* TEX. CODE CRIM. PROC. ANN. art. 38.07 (Vernon 2005); *Carty v. State*, 178 S.W.3d 297, 303 (Tex. App.—Houston [1st Dist.] 2005, pet. ref'd); *Jensen v. State*, 66 S.W.3d 528, 534 (Tex. App.—Houston [14th Dist.] 2002, pet. ref'd); *Sandoval v. State*, 52 S.W.3d 851, 854 n.1 (Tex. App.—Houston [1st Dist.] 2001, pet. ref'd).

2. Elements of Aggravated Sexual Assault

A person commits aggravated sexual assault when he intentionally or knowingly causes the penetration, by any means, of the sexual organ of a child

younger than fourteen years of age. *See* TEX. PENAL CODE ANN. § 22.021(a)(1)(B)(i), 22.021(a)(2)(B). A person also commits aggravated sexual assault when he intentionally or knowingly causes his mouth to contact the sexual organ of a child younger than fourteen years of age. *See id.* § 22.021(a)(1)(B)(iii), 22.021(a)(2)(B). Furthermore, a person commits aggravated sexual assault when he intentionally or knowingly causes his sexual organ to contact or penetrate the mouth of a child younger than fourteen years of age. *See id.* § 22.021(a)(1)(B)(ii), 22.021(a)(2)(B).

3. Analysis

Appellant contends the evidence is insufficient based upon his assertions that the complainant's testimony lacks credibility because it is inconsistent and uncorroborated by physical evidence or other testimony. He points out that complainant was unable to identify the time or location of the assaults with certainty. Appellant also identifies the testimony he elicited in his defense that he never took complainant anywhere in his work truck or on his motorcycle. Appellant essentially asks that we conclude that complainant is not credible even though the fact finder found her credible. An appellate court, however, may not reevaluate the weight and credibility of the record evidence and thereby substitute its own judgment for that of the fact finder. *Williams*, 235 S.W.3d at 750. Furthermore, complainant's mother testified that appellant occasionally took

complainant with him to clean pools, contradicting the witnesses that appellant presented on his own behalf.

Appellant also contends that the absence of medical findings makes the evidence insufficient. However, there is no requirement that a victim's testimony of penetration be corroborated by medical testimony or other physical evidence. *See Bargas v. State*, 252 S.W.3d 876, 887–889 (Tex. App.—Houston [14th Dist.] 2008, no pet.) (holding evidence legally sufficient even though there was no physical evidence and victim's story was not corroborated by other witnesses); *Jensen*, 66 S.W.3d at 534.

Here, complainant testified that she was under fourteen years of age when she was assaulted by appellant in the summer of 1994. Complainant testified that appellant penetrated her mouth with his penis. Complainant testified that appellant put his mouth on her female sexual organ. Complainant testified that appellant put his finger inside her female sexual organ. Viewing the evidence in the light most favorable to the verdict, we determine that the jury could have rationally found each essential element of the aggravated sexual assaults of a child was proven beyond a reasonable doubt, and therefore, we hold that the evidence is sufficient to sustain appellant's convictions. *See Bargas*, 252 S.W.3d at 887–889; *Carty*, 178 S.W.3d at 303; *Jensen*, 66 S.W.3d at 534.

B. Venue

Appellant challenges the sufficiency of the evidence to show that the aggravated sexual assaults occurred in Fort Bend County.

1. Standard of Review

Evidence is insufficient to establish venue if, considering all the evidence admitted at trial, no rational fact finder could have found that the charged offense occurred in the county alleged by a preponderance of the evidence. *See* TEX. CODE CRIM. PROC. ANN. art. 13.17 (Vernon 2005) (prosecution bears burden of proving proper venue by preponderance of evidence); *Rippee v. State*, 384 S.W.2d 717, 718 (Tex. Crim. App. 1964); *Thierry v. State*, 288 S.W.3d 80, 90 (Tex. App.—Houston [1st Dist.] 2009, pet. ref'd) (sufficiency of evidence to establish venue is not reviewed under *Jackson* standard as venue is not essential element of offense); *Duvall v. State*, 189 S.W.3d 828, 830–31 (Tex. App.—Houston [1st Dist.] 2006, pet. ref'd).

2. Propriety of Venue for Sexual Assault

Venue is proper for the trial of a sexual assault in (1) the county in which the sexual assault is committed, or (2) any county through or into which the victim is transported in the course of the sexual assault. *See* TEX CODE CRIM. PROC. art. 13.15 (Vernon 2005). Additionally, if an offense has been committed within Texas, but it cannot be readily determined within which county or counties the

commission took place, venue is proper in (1) the county in which the defendant resides, (2) the county in which the defendant is apprehended, or (3) the county to which he is extradited. *See* TEX CODE CRIM. PROC. art. 13.19 (Vernon 2005).

3. Analysis

Appellant supports his challenge that the evidence was insufficient to show that the aggravated sexual assaults occurred in Fort Bend County by asserting that complainant testified that she did not know the specific location of the houses where she was sexually assaulted and that she did not know if the houses were located in Richmond, Texas or in Fort Bend County. Appellant also points to the testimony of Detective Mark Williams of the Fort Bend County Sheriff's office who testified that he was unable to locate any of the places where the sexual assaults occurred and that it was possible the offense could have happened in another county.

When the sexual assaults occurred, appellant and complainant were both living in the same house located in Richmond, Texas, which is within Fort Bend County. Complainant testified that appellant transported her in his pool-cleaning truck from her house to another house located a short drive away where he sexually assaulted her. Appellant cleaned the pool at that house, and the owner of the pool cleaning company testified that appellant's pool-cleaning jobs all should have occurred within Fort Bend County. Complainant also testified that, on

another occasion, appellant transported her on his motorcycle from her house to an abandoned house located a short drive away where he sexually assaulted her in the attic. Detective Mark Williams testified that one would have to drive for many miles before one would be outside of Fort Bend County.

From this evidence, the jury could have rationally found by the preponderance of the evidence that sexual assaults occurred in Fort Bend County or that appellant transported complainant through Fort Bend County in the course of committing the sexual assaults. *See* TEX CODE CRIM. PROC. art. 13.15.

C. Dates of the Offenses

Appellant challenges the sufficiency of the evidence to show that the aggravated sexual assaults occurred on or around July 1 or July 15, 1994, by asserting that complainant testified that she did not know whether the assaults occurred on or around those dates. However, Complainant testified that the sexual assaults occurred sometime during the summer of 1994, which is "around July 1 or July 15, 1994."

Unless expressly made so, time is not a material element of an offense. *See Garcia v. State*, 981 S.W.2d 683, 686 (Tex. Crim. App. 1998). The primary purpose of specifying a date in the indictment is to show that the prosecution is not barred by the statute of limitations. *Id.* However, aggravated sexual assault of a

child has no period of limitations. *See* TEX. CODE CRIM. PROC. ANN. art. 12.01(1)(B) (Vernon Supp. 2010); TEX. PENAL CODE ANN. § 22.021(a)(1)(B).

We overrule appellant's first and second issues.

Conclusion

We affirm the judgment of the trial court.

Elsa Alcala
Justice

Panel consists of Justices Jennings, Alcala, and Sharp.

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