Opinion issued October 6, 2011.

In The

Court of Appeals

For The

First District of Texas

NO. 01-10-00920-CR

CHAD STUEBER, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the 412th Judicial District Court
Brazoria County, Texas
Trial Court Case No. 60212

MEMORANDUM OPINION

A jury found appellant, Chad Stueber, guilty of the offense of indecency with a child[1] and assessed his punishment at confinement for fifteen years. In his

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[1] *See* TEX. PENAL CODE ANN. § 21.11(a) (Vernon 2011).

sole issue, appellant contends that the evidence is insufficient to support his conviction.

We affirm.

Background

The complainant testified that in the evening on June 1, 2009, in the living room of her house, she watched a movie with her mother, Lisa Haskins; her sister, Sylissa Haskins; her sister's friend, Elissa Davila; and appellant, who was her step-father. The complainant fell asleep during the movie, and she awoke around midnight to find that Haskins, appellant, and her sister had left the room. Davila left the room shortly after the complainant awoke. Appellant then entered the living room and told the complainant that Haskins had "kicked him out of the room," and he asked to "sleep with" the complainant. The complainant consented, although she "was just being nice" because appellant had, earlier that day, taken the family to the beach and bought her a pair of sunglasses. The complainant, who was wearing her two-piece bathing suit and a shirt, then went into her bedroom, and appellant followed. He was wearing "Longhorn night jams" without a shirt when he got into the bed with the complainant. As the complainant was lying against the wall side of the bed, appellant "scooted closer" to her. He "rolled" her over and started "rubbing" her legs and "private area" with his hands, both over and under her bathing suit. He then "pulled something out of his pants and started

rubbing [her] with his private area." Appellant's "private area" touched her "private area" under her bathing suit. After the complainant "pulled away" and said, "Don't touch me," appellant responded, "Did you just tell me not to touch you?" He then left the room, and the complainant "ran" to Sylissa's bedroom and told her and Davila what had just happened with appellant.

Subsequently, Davila left the room to ask Haskins if they could speak in private, and they returned to Sylissa's bedroom, where Sylissa then informed Haskins of what the complainant had just told her and Davila. Haskins then returned to her bedroom and told appellant that he needed to leave the home. Shortly thereafter, the complainant heard a loud noise in the other room, which was followed by a "big boom." Haskins then returned to the complainant's room, told her that appellant was dead, and called for emergency assistance.

On cross-examination, the complainant admitted that when she first met appellant she did not like him, she was upset by Haskins's engagement to him, and she refused to attend their wedding. She further admitted that prior to the incident, she had been diagnosed with Attention Deficit Hyperactivity Disorder ("ADHD") and prescribed medication "for school purposes."

Haskins testified that on the night of June 1, 2009, after watching a movie with her two daughters and Davila, she and appellant went to their bedroom. Haskins attempted to "sexually approach[]" appellant, but he did not

"acknowledge" her, and she went to sleep. Later, after Davila had come into her bedroom and asked to speak with her in private, Haskins got out of bed and went to Sylissa's bedroom, where she saw the complainant looking "scared" and sitting in the bed "with her knees up to her chest." Sylissa told Haskins that appellant had "touched" the complainant. Haskins then asked the complainant if this was "true," and the complainant "shook her head" affirmatively. Haskins then asked the complainant where appellant had touched her, and she "pointed down to her private" area. When Haskins asked what appellant had touched the complainant with, she gestured towards her hand and her "private area."

Haskins then left the room to ask appellant if he had touched the complainant. Appellant denied having touched the complainant and stated that he had "just laid down with her." Haskins told appellant to leave her house, and she returned to her daughter's room. Haskins then heard "banging," and, thinking that appellant was "tearing up" her bedroom, she went back to her bedroom, where she saw appellant with a firearm. After shutting the door, she heard the firearm "[go] off," at which point she opened the door and discovered that appellant had shot himself in the face. Haskins then called for emergency assistance as she returned to her daughter's room.

On cross-examination, Haskins admitted that the complainant had opposed her marriage to appellant. She further admitted that she had taken her daughter to

a psychiatrist for ADHD. The psychiatrist prescribed medication for the complainant's ADHD, and the complainant only took the medication during the school year.

Brazoria County Sheriff's Office ("BCSO") Deputy J. Gentry testified that on the night of June 1, 2009, he was dispatched to the scene of a "shooting [and] possible suicide." He had also been "advised that there was a possible sexual assault involved but no penetration had occurred." After he had inspected the scene of the shooting, he did not collect the bedding of the complainant or inspect the bedding. On cross-examination, Gentry admitted that he had collected DNA samples from the firearm, but not from any other source or location, and he did not search for seminal fluid or pubic hair on the complainant's bedding.

Appellant testified that after going to the beach with Haskins, his step-daughters, and Davila, they returned home and watched a movie together. At some point, he changed into khaki shorts to wear to bed. After the movie, appellant and Haskins went to their bedroom, and they "had a little argument." He "laid back down for a few minutes" but got up to use the restroom. When appellant saw that all of the lights in the house were on, he went into the living room and started turning the lights off. He told the complainant to get into her bed and told Sylissa and Davila not to stay up "too late." Appellant then walked back down the hallway, pulled the complainant's door shut, and went back to his bedroom with

Haskins. Davila knocked on their bedroom door and said that she needed to talk to Haskins, who got up and left the room. After appellant heard "some commotion at the back" of the house, he got up, opened the bedroom door, and Haskins asked him, "What did you do?" Appellant explained that he did not know what Haskins was talking about. After she told him to get his "stuff" and leave, appellant "figured if she wanted [him] to leave, [he] was going to leave for good." At that point, he "busted the glass out" of the gun cabinet, grabbed a firearm, put a bullet in the chamber, put the firearm underneath his chin, and pulled the trigger. Appellant explained that he did not know what Haskins was confronting him with at the time of the shooting and he did not learn of the complainant's accusations until after his release from the hospital. After appellant had shot himself, he "made it back to [his] feet," left the bedroom, and started "screaming" for Haskins, who told him to "get out on the porch and quit bleeding on her floor."

Appellant stated that he did not go into the complainant's bedroom that night, he did not get into bed with the complainant, he did not touch the complainant in her genital area, he did not take his penis and place it on the complainant, and he did not do anything of a sexual nature with the complainant.

Standard of Review

We review the legal sufficiency of the evidence "by considering all of the evidence in the light most favorable to the prosecution" to determine whether any

"rational trier of fact could have found the essential elements of the offense beyond a reasonable doubt." *Jackson v. Virginia*, 443 U.S. 307, 318–19, 99 S. Ct. 2781, 2788–89 (1979). Evidence is legally insufficient when the "only proper verdict" is acquittal. *Tibbs v. Florida*, 457 U.S. 31, 41–42, 102 S. Ct. 2211, 2218 (1982). Our role is that of a due process safeguard, ensuring only the rationality of the trier of fact's finding of the essential elements of the offense beyond a reasonable doubt. *See Moreno v. State*, 755 S.W.2d 866, 867 (Tex. Crim. App. 1988). We give deference to the responsibility of the fact finder to fairly resolve conflicts in testimony, to weigh evidence, and to draw reasonable inferences from the facts. *Williams v. State*, 235 S.W.3d 742, 750 (Tex. Crim. App. 2007). However, our duty requires us to "ensure that the evidence presented actually supports a conclusion that the defendant committed" the criminal offense of which she is accused. *Id.*

We now review the factual sufficiency of the evidence under the same appellate standard of review as that for legal sufficiency. *Ervin v. State*, 331 S.W.3d 49, 52–56 (Tex. App.—Houston [1st Dist.] 2010, pet. ref'd.).

Sufficiency of the Evidence

In his sole issue, appellant argues that the evidence is insufficient to support his conviction because the State failed to prove that he engaged in sexual contact with the complainant.

A person commits the offense of indecency with a child by contact if the person, with a child younger than 17 years of age and not the person's spouse, whether the child is of the same or opposite sex, engages in sexual contact with the child or causes the child to engage in sexual contact. *See* TEX. PENAL CODE ANN. § 21.11(a)(1) (Vernon 2011). "'Sexual contact' means the following acts, if committed with the intent to arouse or gratify the sexual desire of any person: (1) any touching by a person, including touching through clothing, of the anus, breast, or any part of the genitals of a child." *See id.* § 21.11(c)(1).

We note at the outset that the testimony of a complainant, standing alone, may be sufficient to support a conviction for sexual assault. *Jordan-Maier v. State*, 792 S.W.2d 188, 190 (Tex. App.—Houston [1st Dist.] 1990, pet. ref'd); *see also Ruiz v. State*, 891 S.W.2d 302, 304 (Tex. App.—San Antonio 1994, pet. ref'd). Here, the complainant testified that appellant followed her into her bedroom, climbed into her bed, and began "rubbing" her legs and "private area" with his hands. He then "pulled something out of his pants and started rubbing [her] with his private area," and his "private area" was touching her "private area." This evidence establishes the offense of indecency with a child. *See Billy v. State*, 77 S.W.3d 427, 429 (Tex. App.—Dallas 2002, pet. ref'd) (holding that child complainant's testimony that she woke to find defendant's hand in her panties was legally sufficient to sustain conviction).

We recognize that appellant denied touching the complainant in her genital area, placing his penis on the complainant, or doing anything of a sexual nature with the complainant. However, the trier of fact is the sole judge of the weight and credibility of the evidence, and, based upon the testimony of the complainant, the jury was entitled to resolve any credibility issues against appellant. *Marshall v. State*, 210 S.W.3d 618, 625 (Tex. Crim. App. 2006); *Johnson v. State*, 23 S.W.3d 1, 7 (Tex. Crim. App. 2000); *Robles v. State*, 104 S.W.3d 649, 652 (Tex. App.—Houston [1st Dist.] 2003, no pet.). We also recognize that there was no medical, physical, or forensic scientific evidence introduced to show that appellant had committed the offense of indecency with a child. However, under the circumstances, the lack of medical or DNA evidence did not render the evidence supporting appellant's conviction legally insufficient. *See Washington v. State*, 127 S.W.3d 197, 205 (Tex. App.—Houston [1st Dist.] 2003, pet. dism'd) ("The jury could have reasonably believed that [the complainant] was sexually assaulted, but that, due to the circumstances of the assault, there was no physical evidence of the assault remaining.").

Thus, viewing all of the evidence in the light most favorable to the prosecution, we conclude that a rational trier of fact could have found the essential elements of the offense beyond a reasonable doubt. Accordingly, we hold that the evidence is sufficient to support appellant's conviction.

We overrule appellant's sole issue.

Conclusion

We affirm the judgment of the trial court.

Terry Jennings
Justice

Panel consists of Justices Jennings, Sharp, and Brown.

Do not publish. TEX. R. APP. P. 47.2(b).