

Opinion issued July 18, 2017



In The
Court of Appeals
For The
First District of Texas

NO. 01-17-00049-CV

IN THE MATTER OF J.G.M.

**On Appeal from the County Court at Law No. 3
Fort Bend County, Texas
Trial Court Case No. 14-CJV-019101**

MEMORANDUM OPINION

This is an interlocutory appeal from the trial court's order transferring a juvenile proceeding to criminal district court. *See* TEX. FAM. CODE ANN. § 56.01(c)(1)(A) (West Supp. 2016). In its order, the juvenile court waived its jurisdiction over J.G.M. and transferred his case to criminal district court to try him as an adult for aggravated sexual assault, a first-degree felony. On appeal, J.G.M.

complains that the trial court's finding that he was 14 years old at the time of the alleged offense is not supported by legally sufficient evidence. We affirm.

BACKGROUND

J.G.M. was 23 years old at the time that the State petitioned the juvenile court for discretionary transfer to criminal court to charge him with an aggravated sexual assault that he allegedly committed at age 14. The complaining witness made her first outcry about the offense after J.G.M. had turned 18.

The State requested that the juvenile court waive its jurisdiction and transfer J.G.M.'s case to criminal district court pursuant to section 54.02(j) of the Texas Family Code. *See* TEX. FAM. CODE ANN. § 54.02(j) (West 2014); *see also* TEX. PENAL CODE ANN. § 22.021 (West Supp. 2016) (defining aggravated sexual assault as a first-degree felony). The State contended in its petition that the case qualified for transfer under subsection (j) because: (1) J.G.M. was 14 years of age or older and under 17 years of age when he committed the offense; and (2) the State did not have probable cause to proceed in juvenile court until new evidence was found after his 18th birthday.

At the hearing, the complainant testified that J.G.M. had sexually assaulted her while she was inside the chapel of the church that her family and J.G.M.'s family attended. Concerning her age at the time of the offense, she testified:

THE STATE: How old were you when that [sexual assault] happened?

THE COMPLAINANT: I was 7 years old. I know that because it was before I was baptized.

....

THE STATE: This happened to you when you were 7 years old, correct?

THE COMPLAINANT: Yes, ma'am.

Tracy Taylor, a detective with the Sugar Land Police Department, testified that she investigated the sexual assault charge and had interviewed both the complainant and J.G.M. in the course of her investigation. She testified:

THE STATE: Did [J.G.M.] seem familiar with that victim?

TAYLOR: Yes.

THE STATE: And how did he indicate he was familiar?

TAYLOR: Knew her from church.

THE STATE: And then in the course of your conversation, the specific victim you identified was [the complainant]?

TAYLOR: Yes.

THE STATE: Did [J.G.M.] provide or did you provide his age at the time of that incident . . . ?

TAYLOR: I believe I did.

THE STATE: Okay. Did he seem to be aware of how old [the complainant] was at the time?

TAYLOR: Yes.

THE STATE: And how old did you determine she was?

TAYLOR: She was 7.

THE STATE: And how old would he have been?

TAYLOR: 14.

Detective Taylor also testified that J.G.M. was born in November 1990.

The complainant's mother testified that the complainant was born in June 1998 and was seven years old when the assault occurred. Focusing on that time frame, in 2005, the mother testified that she remembered an occasion at the church when she had asked J.G.M. to watch the complainant while her parents attended ecclesiastical interviews. The mother remembered that occasion when the complainant revealed to her mother in 2013 that J.G.M. had assaulted her.

At the conclusion of the hearing, the juvenile court waived its jurisdiction and ordered that the case be transferred to criminal district court. The juvenile court made findings in support of its order.

DISCUSSION

A. Juvenile court jurisdiction

Juvenile courts have exclusive original jurisdiction over cases involving what otherwise would be criminal conduct committed by children 10 years of age or older and under 17 years of age. TEX. FAM. CODE ANN. §§ 51.02(2)(a), 51.03(a)(1), 51.04(a) (West Supp. 2016). But if a juvenile court determines that certain statutory conditions are met, it may waive its jurisdiction and transfer the case to the district court for criminal proceedings. *See* TEX. FAM. CODE ANN. § 54.02 (West 2014). The State initiates this process by requesting such a hearing and providing notice. *Id.* § 54.02(k).

This appeal concerns whether the State met its burden to show that the juvenile court's transfer of this case is appropriate under section 54.02(j) of the Family Code. According to that provision, a juvenile court may waive its jurisdiction and transfer a case to criminal court if it finds that (1) the accused is alleged to have committed an offense that would otherwise constitute a first-degree felony; (2) the accused is 18 years of age or older at the time of the hearing; (3) the accused was 14 years of age or older at the time of the alleged offense; (4) no adjudication concerning the alleged offense has been made and no adjudication hearing concerning the offense has been conducted; (5) the State has shown by a preponderance of the evidence that it was not practicable to proceed in juvenile court before the accused's 18th birthday because of reasons beyond the State's control or because of new evidence; and (6) probable cause exists to believe the accused committed the offense. *Id.* § 54.02(j). J.G.M. challenges whether legally sufficient evidence supports the third finding, that he was 14 years old at the time of the offense.

B. Legal sufficiency standard of review

When reviewing the legal sufficiency of the evidence in a juvenile certification case, we credit the proof favorable to the trial court's findings and disregard contrary proof unless a reasonable factfinder could not reject it. *Moon v. State*, 410 S.W.3d 366, 371 (Tex. App.—Houston [1st Dist.] 2013), *aff'd*, 451

S.W.3d 28 (Tex. Crim. App. 2014). If there is more than a scintilla of evidence supporting a finding, then the proof is legally sufficient. *Id.* More than a scintilla of evidence exists if the evidence “rises to a level that would enable reasonable and fair-minded people to differ in their conclusions.” *King Ranch, Inc. v. Chapman*, 118 S.W.3d 742, 751 (Tex. 2003). If the evidence does no more than create a mere surmise or suspicion of fact, then it is legally insufficient. *Id.*

The factfinder determines the weight to place on contradictory testimonial evidence because that determination depends on an evaluation of credibility and demeanor. *Cain v. State*, 958 S.W.2d 404, 408–09 (Tex. Crim. App. 1997). The factfinder may choose to believe all, some, or none of the testimony presented. *Id.* at 407 n.5. An appellate court may not re-weigh the evidence or substitute its judgment for that of the factfinder. *Johnson v. State*, 967 S.W.2d 410, 412 (Tex. Crim. App. 1998); *see also King v. State*, 29 S.W.3d 556, 562 (Tex. Crim. App. 2000); *Wilson v. State*, 863 S.W.2d 59, 65 (Tex. Crim. App. 1993).

C. Analysis

J.G.M. contends that no evidence supports the juvenile court’s finding that he was at least 14 years of age at the time of the offense. The complaining witness, however, testified that she was seven years old when J.G.M. assaulted her, at which time J.G.M. would have been 14. The uncorroborated testimony of a complaining witness is legally sufficient as to this element of aggravated sexual

assault. *See* TEX. CODE CRIM. PROC. ANN. art. 38.07 (West Supp. 2016) (conviction of aggravated sexual assault is “supportable on the uncorroborated testimony of the victim of the sexual offense”); TEX. PENAL CODE ANN. § 22.021(a)(2)(B) (West Supp. 2016) (complainant’s age is element of aggravated sexual assault).

J.G.M. was born in November 1990. The complainant was born in June 1998 and did not turn seven until after J.G.M.’s 14th birthday. The complainant’s testimony in conjunction with the undisputed evidence of J.G.M.’s birthdate supports the juvenile court’s finding that J.G.M. was 14 years old when the assault occurred.

J.G.M. contends that the following portion of the complainant’s cross-examination undermines the testimony elicited on direct examination concerning her age:

DEFENSE COUNSEL: . . . [Y]ou were baptized when you were 8?

THE COMPLAINANT: Yes.

DEFENSE COUNSEL: And all you know is that this offense occurred before you were eight?

THE COMPLAINANT: Yes, ma’am.

We defer to the trial court’s determination of the weight to accord this testimony as well as its reconciliation of the complainant’s response with her earlier testimony. A reasonable factfinder could interpret the complainant’s response as consistent

with her testimony that she was seven and not yet eight years old when the assault occurred. Viewing the evidence in the light favorable to the juvenile court's findings, we hold that legally sufficient evidence supports the finding that J.G.M. was 14 years old at the time of the charged offense.

J.G.M. further argues that the lack of specificity concerning the date the offense allegedly occurred undermines the trial court's finding. But neither the offense with which J.G.M. was charged nor the statute permitting the transfer of his case to criminal district court requires that the State prove the offense occurred on a specific date. *See* TEX. FAM. CODE ANN. § 54.02(j) (requiring, among other things, that State show juvenile was at least 14 years old at time of offense but not specific date of offense); *see also* TEX. CODE CRIM. PROC. ANN. art. 21.02(6) (West 2009) (deeming indictment sufficient if time alleged is some date anterior to presentment but not so remote that limitations would bar prosecution); *Sledge v. State*, 952 S.W.2d 253, 256 (Tex. Crim. App. 1997) (“This Court has held that the State need not allege a specific date in an indictment.”) (citing *Mitchell v. State*, 330 S.W.2d 459, 462 (Tex. Crim. App. 1959)).

CONCLUSION

We affirm the juvenile court's order waiving jurisdiction and transferring the case to a criminal district court.

Jane Bland
Justice

Panel consists of Justices Higley, Bland, and Brown.