Opinion issued August 4, 2020

In The

Court of Appeals

For The

First District of Texas

NO. 01-18-00943-CR

JOHN CHESTER HELTON TAYLOR, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the 405th District Court
Galveston County, Texas
Trial Court Case No. 17CR0081

MEMORANDUM OPINION

A jury found appellant, John Chester Helton Taylor, guilty of the offense of aggravated sexual assault of a child.[1] After appellant pleaded true to the allegations in two enhancement paragraphs that he had twice been previously convicted of

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1 TEX. PENAL CODE ANN. § 22.021(a)(1)(B), (2)(B).

felony offenses, the jury assessed his punishment at confinement for thirty years. In his sole issue, appellant contends that the evidence is legally insufficient to support his conviction.

We affirm.

Background

Former La Marque Police Department ("LMPD") Officer R. Rice testified that on the December 24, 2016, he responded to a report of a sexual assault at a home in Galveston County, Texas. Rice testified that the residence consisted of a house on a lot with a garage or carport and another, smaller, detached building "about 10 to 20 yards" behind the garage or carport that "looked like a very, very small residence." That building "had two bedrooms" and "two doors." The door on the left "was opened," and he "could tell that . . . someone was living there." The other room "was just storage," with "a bunch of chairs and whatnot in it."

When Officer Rice arrived at the residence, he spoke with the complainant's mother. He remembered seeing two children but did not speak with them. After speaking with the complainant's mother for about five to ten minutes, Rice told her that he needed to contact Child Protective Services about the sexual assault, and she needed to take the complainant to the hospital and get "a rape kit . . . done" by the Sexual Assault Nurse Examiner ("SANE").

Angela Smith, an emergency-room and SANE nurse at University of Texas Medical Branch at Galveston ("UTMB"), testified that she examined the complainant. She explained the procedure she used for conducting the sexual assault examination, including recording a history of the assault as told by the complainant. According to Smith's records, which she read to the jury, the complainant stated:

> I went to [appellant's] . . . room to show him my new phone my mom got me yesterday; and we started talking. Then I sat down on the couch he sleeps on, and he was talking that his hand was hurting because he broke his hand; and that's when it happened. Well, I just laid down on the couch and then he got next to me and he started doing stuff. He was rubbing on me with his hands, and then he pulled down my pants. Then he pulled down his pants. Then he started doing all that. [(]Clarified, penetrated [the complainant]'s vagina with [appellant]'s penis.[)] Then that was it. Then my sister came in, and he started acting like everything was cool. A month ago, I was in the house. It's hard to explain. I can't remember all of it, but he did the same thing—[(C]larified [appellant]'s penis penetrated [the complainant]'s vagina[)]—but his hand wasn't broken.

(Internal quotations omitted.)

Smith confirmed that the quotations were verbatim recordings of the complainant's statements to her. As to the complainant's appearance and demeanor when she told Smith about the sexual assault, Smith recorded:

> She was well nourished. Her hair was disheveled. Alert and oriented by answering questions and following commands appropriately. Spoke in clear and concise speech with short responses. Quiet and crying at times. Sat up on stretcher with feet dangling, holding stuffed animals.

According to the complainant's medical records, which were admitted into evidence, the sexual assault examination revealed that the complainant was actively

bleeding from the vagina and had a hymenal tear, as well as redness, pain, and abrasions on the left side of the vagina. Smith testified that these types of injuries were consistent with blunt force trauma from a sexual assault. Materials collected from the exam showed traces of semen in the crotch of the complainant's pants.

The complainant's fifteen-year-old sister testified that she lived at her grandfather's house in La Marque, Texas with her mother, her two younger sisters, and her "step[-]dad." At the time of trial, the complainant was twelve years old.

In late 2016, appellant—her uncle—also lived with them. The complainant's sister described the living arrangements at her grandfather's home as consisting of a "medium sized" main house and "another [small] house" that was detached from the main house, where the family stored things. Appellant slept in the small, detached house, which was "basically, his own house that was in [the] back[yard]." Appellant just had a room out there with two couches in it. "[T]hroughout the day, he would . . . come in [to the main house] and just chill out for the day; and come nighttime, he would go out to his own part."

On the morning of December 24, 2016, complainant's sister recalled that her stepfather took her mother to work. It was not a school day, and the girls' grandfather and appellant were at the home with them. Their stepfather was outside the house working on his car in the driveway. She and the complainant dressed themselves that morning in casual clothes; the complainant put on a tee-shirt and

sweatpants. The complainant's sister saw the complainant leave the house, but because they were "just hanging around," she "didn't think much of it."

According to the complainant's sister, at some point that morning, her stepfather left in his car and returned with doughnuts. He gave them to her and told her to pass them out to the family. The complainant's sister was close to the building with appellant's room and went there first. She knocked on the door as she opened it. From the open doorway, she saw appellant and the complainant lying together on one of the couches, covered with a blanket. Appellant's back was against the back of the couch and the complainant had her back against him.

The sister could tell that the complainant did not have her sweatpants on; the blanket did not completely cover her, and her bare thigh was exposed. The complainant appeared pale and nervous; appellant "looked like—basically, like . . . he got caught." Appellant stood up, fully dressed, and opened the window blinds. The complainant remained on the sofa under the blanket.

Feeling sick to her stomach, the complainant's sister set the doughnuts on a nearby table, said "here's the doughnuts," and left the room. She went into the main house to her room. After a while, the complainant entered the room, followed by appellant. Appellant asked the sister if she was okay; she responded, "Yeah, my stomach just hurts." Appellant then walked out of the room and left the house.

After appellant left, the complainant's sister borrowed her grandfather's cellular telephone, locked herself in a bathroom, and called her mother to tell her what had happened.

The complainant testified that on the morning of December 24, 2016, she went to appellant's room to show him her new cellular telephone. Appellant was lying on the larger couch watching television. She sat down on the smaller couch. As they conversed, she went to the larger couch, sat down near his feet, then eventually laid down. Appellant told her to take off her pants and penetrated her vagina with his penis. A short time later, the complainant's sister came into the room with doughnuts.

The complainant's mother testified that on December 24, 2016, she, her husband, her daughters, her father, and appellant lived at her father's home in Galveston County, Texas. That morning, she left home to get to work at the CVS Pharmacy in La Marque by 8:00 a.m. Her father, her daughters, and appellant were at home when she left. Less than an hour later, she received a telephone call from her oldest daughter. She "could tell" her oldest daughter was crying "because her voice was shaking"; she "was breathing hard" and sounded "afraid." The complainant's mother told her to stay on the phone with her until she got home. On the way home, the complainant's mother stopped at the LMPD station. She told dispatch: "Hey, there's an incident that may have taken place. I need an escort out.

It's involving my daughter and my brother with him sexually abusing her. I need an escort." Officer Rice came out and followed the complainant's mother to her home. By the time they arrived, appellant was no longer there. Officer Rice took a report, and, at his advice, she took the complainant to UTMB for a sexual assault examination.

Venue

In his sole issue, appellant argues that the evidence is legally insufficient to support his conviction because the State did not "prove beyond a reasonable doubt that th[e] offense occurred within the jurisdiction of Galveston County, Texas." Appellant asserts that "[t]he testimony adduced at trial never indicated that the alleged acts against the complainant took place at a particular location within Galveston County," the testimony "pointed to where the family lived, not where the alleged criminal [offense] took place," and, as a result, the State did not establish that jurisdiction lay in Galveston County.

Venue and jurisdiction are two distinct concepts. *Etchieson v. State*, 574 S.W.2d 753, 759 (Tex. Crim. App. 1978); *Yocham v. State*, No. 01-18-00341-CR, 2019 WL 2426170, at *2 (Tex. App.—Houston [1st Dist.] June 11, 2019, no pet.). Jurisdiction concerns the authority of a court to try a case, whereas venue concerns the place or county where a case may be tried. *Etchieson*, 574 S.W.2d at 759; *Donovan v. State*, 232 S.W.3d 192, 196 (Tex. App.—Houston [1st Dist.] 2007, no

pet.). The Galveston County district court had jurisdiction to try this felony case, without regard to where in Texas the offense was committed. *See* TEX. CONST. art. V, § 8; *Fairfield v. State*, 610 S.W.2d 771, 779 (Tex. Crim. App. [Panel Op.] 1981). We construe appellant's issue not as a challenge to the power of the State to prosecute crimes committed within its jurisdiction, but as a challenge to whether venue for the criminal offense appellant committed lies in Galveston County.

Appellant asks us to review his challenge to the sufficiency of the evidence under the standard enunciated in *Jackson v. Virginia*. 443 U.S. 307 (1979). *See id.* at 318–19; *Williams v. State*, 235 S.W.3d 742, 750 (Tex. Crim. App. 2007). This standard applies to challenges to the sufficiency of the evidence supporting the essential elements of the charged offense, but venue is not an essential element of the charged offense. *See Schmutz v. State*, 440 S.W.3d 29, 34 (Tex. Crim. App. 2014). The *Jackson* standard of review thus does not apply.

Appellant did not contest venue in the trial court. We therefore must presume that the State proved venue at trial unless the record affirmatively demonstrates contrary venue. *See* TEX. R. APP. P. 44.2(c)(1); *Thompson v. State*, No. 01-03-01287-CR, 2005 WL 375445, at *1 (Tex. App.—Houston [1st Dist.] Feb. 17, 2005, pet. ref'd) (mem. op., not designated for publication); *Worley v. State*, No. 01-03-00329-CR, 2004 WL 744584, at *2 (Tex. App.—Houston [1st Dist.] Apr. 8, 2004, pet. ref'd) (mem. op., not designated for publication).

Appellant complains that the evidence at trial proved where the family lived, but not where the alleged criminal offense took place. But the complainant's testimony, the records from the sexual assault examination, and the complainant's sister's testimony show that the offense of aggravated sexual assault committed by appellant occurred at the grandfather's home in La Marque, which is in Galveston County. *See* TEX. R. APP. P. 44.2(c)(1); *see also Watts v. State*, 99 S.W.3d 604, 610 (Tex. Crim. App. 2003) (holding appellate court can take judicial notice that city is within county for purposes of venue). As a result, appellant cannot overcome the presumption that venue was proper in Galveston County.

We hold that the evidence is legally sufficient to support appellant's conviction.

We overrule appellant's sole issue.

Conclusion

We affirm the judgment of the trial court.

Julie Countiss
Justice

Panel consists of Justices Keyes, Goodman, and Countiss.

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