Affirmed as modified and Memorandum Opinion filed March 15, 2016.

In The

Fourteenth Court of Appeals

NO. 14-15-00072-CR

REMEDIOS MONDRAGON MARIANO, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the 232nd District Court
Harris County, Texas
Trial Court Cause No. 1408573

M E M O R A N D U M O P I N I O N

In two issues, appellant Remedios Mondragon Mariano challenges the sufficiency of the evidence support to his conviction for sexual assault of a child under the age of fourteen and asks that the judgment be reformed to reflect the correct age of the complainant. We affirm the judgment as modified.

BACKGROUND

The State contends that appellant sexually assaulted his step-daughter, nine-

year-old P.C.,[1] while she and her sister were spending the weekend with their mother. At the time, P.C. lived with her father, her father's girlfriend, her paternal grandmother, and her sister. P.C.'s grandmother ("Grandmother") testified that on the Monday following the weekend at issue, she noticed that P.C. seemed quiet and sad. When Grandmother asked P.C. what was wrong, P.C. told her "that her private was hurting." Grandmother asked P.C. if appellant or her mother had touched her, and P.C. initially told her no. Grandmother then examined P.C.'s sexual organ and saw blood. Grandmother called P.C.'s father and told him what happened. The next morning, P.C. began crying and told Grandmother that appellant had touched her. P.C.'s father called the police, who advised him to take P.C. to Texas Children's Hospital. At the hospital, P.C. reported that appellant had penetrated her vagina with his fingers, and an examination revealed an abrasion or tear on P.C.'s labia minora. Two weeks later, P.C. visited the Children's Assessment Center ("CAC") to be interviewed and examined. During the CAC interview, P.C. again stated that appellant had touched her "private part."

At trial, P.C. testified about the assault. According to P.C., appellant drinks beer "a lot" and had been drinking that night. She stated that she and her sister, E.C., were sleeping on the couch in her mother's living room when appellant came in and sat down beside her. P.C. testified that appellant pulled down her shorts and underwear and touched her "middle part." Using a tissue box, P.C. indicated that appellant penetrated her vagina with his fingers. P.C. stated that after the assault, she went to the restroom and put powder on her vaginal area. P.C. also testified that she went to her mother's room to tell her what happened, but P.C.'s mother told her to "go lay back down and don't worry about it."

[1] On appeal, we will use only the complainant's initials.

Appellant also testified, denying P.C.'s allegations.[2] After hearing all the evidence, the jury found appellant guilty and sentenced him to fifteen years in prison.

ISSUES AND ANALYSIS

I. Sufficiency of the Evidence

In his first issue, appellant argues that the evidence is insufficient to support his conviction for aggravated sexual assault. Specifically, appellant claims that the evidence is insufficient because P.C. and her sister made various inconsistent statements when describing the incident.

A. Standard of Review

When reviewing the sufficiency of the evidence, we view all evidence in the light most favorable to the verdict and determine, based on that evidence and any reasonable inferences therefrom, whether a rational jury could have found the elements of the offense beyond a reasonable doubt. *Gear v. State*, 340 S.W.3d 743, 746 (Tex. Crim. App. 2011) (citing *Jackson v. Virginia*, 443 U.S. 307, 318–19 (1979)). We may not substitute our judgment for that of the jury by reassessing the weight and credibility of the evidence. *Isassi v. State*, 330 S.W.3d 633, 638 (Tex. Crim. App. 2010). Instead, we give deference to the jury's responsibility to impartially resolve any inconsistencies in testimony, weigh evidence, and draw reasonable conclusions. *Id.*

In conducting a sufficiency review, we do not engage in a second evaluation of the weight and credibility of the evidence, but act only to ensure the jury reached a rational decision. *Montgomery v. State*, 369 S.W.3d 188, 192 (Tex.

[2] On cross-examination, appellant admitted that he told the investigating officer that he did not know or remember whether he sexually assaulted P.C.

Crim. App. 2012). The trier of fact may choose to believe or disbelieve any portion of the witnesses' testimony. *Thomas v. State*, 444 S.W.3d 4, 10 (Tex. Crim. App. 2014). When faced with conflicting evidence, we presume that the trier of fact resolved conflicts in favor of the prevailing party. *Wise v. State*, 364 S.W.3d 900, 903 (Tex. Crim. App. 2012).

B. Analysis

A person commits the offense of aggravated sexual assault of a child if the person intentionally or knowingly causes the penetration of the sexual organ of a child under the age of fourteen, by any means. Tex. Penal Code § 22.021(a)(1)(A)(i) & (2)(B). A child complainant's testimony, standing alone, will support a conviction for aggravated sexual assault. Tex. Code Crim. Proc. art. 38.07; *Jensen v. State*, 66 S.W.3d 528, 534 (Tex. App.—Houston [14th Dist.] 2002, pet. ref'd). Additionally, the complainant's testimony need not be corroborated by medical or physical evidence. *Newby v. State*, 252 S.W.3d 431, 437 (Tex. App.—Houston [14th Dist.] 2008, pet. ref'd) (citing *Garcia v. State*, 563 S.W.2d 925, 928 (Tex. Crim. App. 1978)).

Regarding E.C.'s testimony at trial, appellant notes that she initially testified that she did not observe the assault. The prosecutor then asked for a break to speak with E.C., but when they returned, E.C. reiterated that she did not see anything. Finally, E.C. testified that she saw appellant on the couch that night. E.C. testified that she originally said she did not observe anything because she was afraid something bad might happen to her if she spoke out.

Appellant also points out that P.C. testified inconsistently. First, he notes that P.C. initially stated that appellant never entered the living room. Second, appellant points out that P.C. testified that she put powder on her vaginal area herself, but she told her grandmother that her mother did it. Third, appellant claims

that the story that P.C. immediately told her mother about the assault conflicts with the mother's testimony that P.C. told her nothing.

Appellant's arguments regarding the inconsistencies in P.C. and her sister's testimony are aimed at the witnesses' credibility. However, it is the jury's responsibility to determine the credibility of witness testimony and the weight to be afforded to it. *Brooks v. State*, 323 S.W.3d 893, 899 (Tex. Crim. App. 2010). Having heard testimony from P.C. and her sister, as well as appellant himself, the jury was in the best position to assess the credibility of their statements. When presented with conflicting inferences, we presume the jury resolved such conflicts in favor of the verdict, and we must give deference to that determination. *Clayton v. State*, 235 S.W.3d 772, 778 (Tex. Crim. App. 2007). We are not to sit as a thirteenth juror and reevaluate the evidence. *Isassi*, 330 S.W.3d at 638. Appellant's conviction indicates that the jury found the State's witnesses to be credible, and we must defer to that decision. *See Brooks*, 323 S.W.3d at 899.

P.C.'s testimony provided evidence of each of the elements of the charged offense. Regarding the specifics of the incident, P.C. testified that she was asleep on the couch in the living room when appellant came in and sat next to her. P.C. stated that appellant pulled down her shorts and underwear and touched her "middle part" with his "whole hand." She acknowledged that her "middle part" was the area between her legs that no one should touch. When asked to demonstrate how appellant touched her, P.C. inserted her hand into a tissue box and moved it around inside. Viewing this testimony in the light most favorable to the verdict, the jury, as the trier of fact, could have rationally determined that the essential elements of the offense were met beyond a reasonable doubt. P.C. was nine years old at the time of the incident, and her testimony alone is enough to sustain appellant's conviction. *See Tran v. State*, 221 S.W.3d 79, 88 (Tex. App.—

Houston [14th Dist.] 2005, pet. ref'd).

Additionally, although the complainant's testimony does not have to be corroborated by physical evidence, *see Newby*, 252 S.W.3d at 437, P.C.'s account is supported by physical findings. Medical records from the examination of P.C. conducted shortly after the assault indicated "[t]enderness, bruising, and tears/abrasions noted to the base of the labia minora." At trial, the CAC doctor testified that these injuries would be consistent with P.C.'s account of what happened and with penetration of the sexual organ of a child.

Based on the testimony from P.C., her sister, and the CAC doctor, and the results of P.C.'s physical examination, the jury could have found that the elements of aggravated sexual assault of a child younger than fourteen had been established beyond a reasonable doubt. The jury concluded that P.C. and her sister were credible witnesses and that their testimony supported appellant's conviction. As the reviewing court, it is not our responsibility to discount or reexamine evidence. *Isassi*, 330 S.W.3d at 638. We serve only as a safeguard to ensure that the jury made a rational determination. *Id.* We conclude that the evidence is legally sufficient to support appellant's conviction, and we overrule his first issue.

II. Reformation of the Judgment

In his second issue, appellant asks that the judgment be reformed to reflect the correct age of P.C. at the time of the assault. This Court has the authority to reform the trial court's judgment under certain circumstances. *See* Tex. R. App. P. 43.2(b); *Bigley v. State*, 865 S.W.2d 26, 27–28 (Tex. Crim. App. 1993). An appellate court may reform or correct a trial court judgment "to make the record speak the truth when it has the necessary data and information to do so, or make any appropriate order as the law and nature of the case may require." *Nolan v. State*, 39 S.W.3d 697, 698 (Tex. App.—Houston [1st Dist.] 2001, no pet.) (internal

quotations omitted). Because we have all of the evidence and information necessary for reformation here, we may reform the judgment on appeal. *See Brewer v. State*, 572 S.W.2d 719, 723 (Tex. Crim. App. 1978); *Graham v. State*, 693 S.W.2d 29, 31 (Tex. App.—Houston [14th Dist.] 1985, no pet.).

The judgment recites that "the age of the victim at the time of the offense was 7 years." However, P.C.'s medical records and testimony at trial clearly indicate that she was nine years old on the day of the assault. The State concedes that P.C. was nine years old and does not oppose reformation of the judgment. Accordingly, we reform the judgment to accurately reflect P.C.'s age. The judgment is thus modified to read: "the age of the victim at the time of the offense was 9 years."

CONCLUSION

We modify the trial court's judgment and affirm the judgment as modified.

/s/ Ken Wise
Justice

Panel consists of Justices Jamison, McCally, and Wise.
Do Not Publish — TEX. R. APP. P. 47.2(b).