

Affirmed and Memorandum Opinion filed April 7, 2016.



In The

Fourteenth Court of Appeals

NO. 14-15-00382-CR

CLAUDELL WILLIAMS, Appellant

V.

THE STATE OF TEXAS, Appellee

**On Appeal from the 338th District Court
Harris County, Texas
Trial Court Cause No. 1451749**

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

Appellant Claudell Williams appeals his conviction for indecency with a child. In a single issue he challenges the sufficiency of the evidence to support his conviction. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

When the complaining witness, Amy,¹ was five years old, her mother noticed Amy with her pants and panties down touching herself around her vagina. The mother questioned Amy about her behavior, and Amy told her mother that appellant had done this to her. Appellant lived with Amy's grandmother. The mother would frequently leave Amy with appellant and the grandmother while the mother was working or training for work. When Amy spent the night at her grandmother's apartment, appellant would put Amy on the bus to school in the morning. The mother recalled at least two times in which Amy had been left alone with appellant, once when she picked up Amy, and another time when she left Amy with appellant while she went shopping.

The mother reported the abuse to the police who told the mother to take her daughter to a hospital to have her examined. The mother took Amy to the closest hospital, and the child was eventually transported to Texas Children's Hospital. After medical personnel conducted a full sexual-assault examination of the child, the mother was referred to the Children's Assessment Center.

Amy was seen by Nurse Alma Diaz at Texas Children's Hospital. Diaz learned Amy had contact with the appellant approximately four days prior to her hospital visit. During the exam, Amy was able to identify private parts and told Diaz about the incident. As recorded by Diaz, Amy reported:

[Appellant] touches me in my middle part. Patient points to vagina. He does it a lot. He touches me with his middle part. He takes my pants down and pulls down my panties. It happens in my cousin's room, but my cousin is not there. He doesn't take his pants off. He just pulls his middle part out. His middle part looks like a wiener.

Diaz recorded no physical trauma, but was not surprised by the lack of

¹ We use a pseudonym for the child-complainant.

trauma, because of the type of contact disclosed by Amy. Diaz testified she would not have expected to observe physical trauma. Diaz also recorded that Amy initiated a sophisticated sexualized behavior by pulling her pants down and patting herself.

Following the examination, Amy was sent to Harris County Children's Assessment Center for an examination by Susan Odhiambo, a forensic interviewer. Amy reported to Odhiambo that appellant called her to her cousin's room and touched her "middle part" with his "middle part." Amy's use of the term, "middle part," referred to her vagina and appellant's penis. Amy explained that appellant pulled down her clothes and that his penis looked like a "wiener." Amy said that while this was happening her grandmother was in the living room. Amy also reported that appellant touched her buttocks with his penis, and it tickled. Amy reported that this happened several times. She also reported that she was lying on her back when appellant touched her vagina with his penis and that he turned her over onto her stomach when he touched her buttocks with his penis. Amy also reported that appellant made her touch his penis. Amy also told Odhiambo that appellant put his mouth on her mouth. Odhiambo testified that Amy appeared uncomfortable and embarrassed throughout the entire interview.

Amy was interviewed prior to trial at least three times. Each time she gave consistent accounts of what happened with minor discrepancies. The discrepancies consisted of Amy's estimates of the duration of the episodes and her estimates of how many times the incidents occurred. Amy also reported that at least once the touching occurred over her clothing.

At trial, Amy testified that appellant touched her vagina and her bottom with his hand. She also testified that he made her lay on her stomach, pulled down his pants, and touched her bottom with his penis. Amy testified that she touched

appellant's penis with her hand, and that he touched her vagina with his penis.

Brenda Tyler, appellant's girlfriend and Amy's grandmother, testified that in her apartment she can see the bedroom when she is sitting in the living room. The bedroom in the apartment did not have a door. Tyler testified that she never left Amy alone with anyone else in the apartment, and that the incident reported by Amy could not have occurred without Tyler seeing them from the living room. Tyler testified that she did not believe appellant abused Amy.

Appellant testified in his own behalf. He admitted a criminal record dating back to 1987, which included several convictions for possession of controlled substances plus convictions for delivery of cocaine and auto theft. Appellant denied abusing Amy.

The jury convicted appellant of indecency with a child and assessed punishment, enhanced by two prior convictions, at 29 years' confinement in the Institutional Division of the Texas Department of Criminal Justice.

SUFFICIENCY OF THE EVIDENCE

In a single issue appellant argues the evidence is insufficient to establish appellant committed the offense of indecency with a child. Specifically, he argues Amy's inconsistent testimony undermined her credibility, and the testimony regarding the layout of the apartment coupled with testimony regarding Amy's contradictory out-of-court statements reveal that it was "completely implausible that appellant touched Amy's genitals."

When determining whether evidence is legally sufficient to support the verdict, we view all of the evidence in the light most favorable to the verdict and determine, based on that evidence and any reasonable inferences therefrom, whether any rational fact finder 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 do not sit as a thirteenth juror and may not substitute our judgment for that of the fact finder by re-evaluating weight and credibility of the evidence. *Isassi v. State*, 330 S.W.3d 633, 638 (Tex. Crim. App. 2010). Rather, we defer to the responsibility of the fact finder to fairly resolve conflicts in testimony, weigh the evidence, and draw reasonable inferences from basic facts to ultimate facts. *Id.* We “determine 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.” *Hooper v. State*, 214 S.W.3d 9, 16–17 (Tex. Crim. App. 2007); *Pearson v. State*, 431 S.W.3d 733, 734–35 (Tex. App.—Houston [14th Dist.] 2014), pet. ref’d).

The testimony of a child sexual-abuse complainant alone is sufficient to support a conviction for indecency with a child. Tex. Code Crim. Proc. Ann. art. 38.07 (West Supp. 2015) (“A conviction . . . is supportable on the uncorroborated testimony of the victim of the sexual offense if the victim informed any person, other than the defendant, of the alleged offense within one year after the date on which the offense is alleged to have occurred.”). Courts give wide latitude to testimony given by child-complainants of sexual abuse. *Gonzalez Soto v. State*, 267 S.W.3d 327, 332 (Tex. App.—Corpus Christi 2008, no pet.). The child-complainant’s description of what happened to her need not be precise, and she is not expected to express herself at the same level of sophistication as an adult. *See Villalon v. State*, 791 S.W.2d 130, 134 (Tex. Crim. App. 1990). There is no requirement that the child-complainant’s testimony be corroborated by medical or physical evidence. *See Lee v. State*, 176 S.W.3d 452, 458 (Tex. App.—Houston [1st Dist.] 2004), *aff’d*, 206 S.W.3d 620 (Tex. Crim. App. 2006) (holding “[t]he lack of physical or forensic evidence is a factor for the jury to consider in weighing

the evidence.”).

Appellant does not challenge the fact that Amy reported the incident to another person within one year of the date of the alleged offense. Appellant first argues that Amy’s testimony was not credible because she told different versions of the incident. Amy consistently reported that appellant touched her inappropriately. At times she did not reveal every instance of touching and she reported that she was touched in different places. Amy’s testimony, however, is sufficient to support the jury’s finding that appellant was guilty of indecency with a child. Tex. Code Crim. Proc. Ann. art. 38.07. The courts liberally construe the testimony given by child-complainants of sexual abuse as not being as clear as that which may be given by an adult. *See, e.g., Villalon*, 791 S.W.2d at 134 (cannot expect child complainants to communicate with ability and clarity of mature adult); *Guia v. State*, 723 S.W.2d 763, 765 (Tex. App.—Dallas 1986, writ ref’d) (being touched where one “uses the restroom” sufficient for establishing sexual contact). As long as the child communicates to the trier of fact that the touching occurred on a part of the body within the definition of the statute, the evidence will be held sufficient. *See Clark v. State*, 558 S.W.2d 887, 889 (Tex. Crim. App. 1977) (reaffirmed rule that “evidence [is] sufficient to show a touching of the genitals or ‘sexual parts’ even though the victim used language different from that in the statute to describe the part of the body touched”).

Appellant further argues that Amy’s version of the facts was contradicted by Tyler’s testimony about the layout of the apartment. The determination of what weight to give contradictory testimonial evidence is within the sole province of the jury, as it turns on an evaluation of credibility and demeanor. *Cain v. State*, 958 S.W.2d 404, 408–09 (Tex. Crim. App. 1997). Thus, the jury was free to believe all or any part of the testimony of the State’s witnesses, and disbelieve all or any part

of appellant's witnesses. A court of appeals must show deference to such a jury finding. *Id.* at 409. The jury found Amy's testimony credible, despite Tyler's testimony concerning the layout of the apartment.

Reviewing all of the evidence in the light most favorable to the verdict, we find a rational jury could have found appellant guilty beyond a reasonable doubt. We overrule appellant's sole issue on appeal.

We affirm the trial court's judgment.

/s/ Ken Wise
Justice

Panel consists of Chief Justice Frost and Justices Boyce and Wise.
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