In The

Court of Appeals

Ninth District of Texas at Beaumont

NO. 09-08-00102-CR

LARRY CHARLES CULLINS, JR., Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the 258th District Court
Polk County, Texas
Trial Cause No. 19388

MEMORANDUM OPINION

A jury convicted Larry Charles Cullins, Jr. of aggravated sexual assault of a child and assessed punishment at twenty years in prison. TEX. PEN. CODE ANN. § 22.021(a) (Vernon Supp. 2009). Appellant argues the evidence is legally insufficient to support his conviction.

When reviewing a legal sufficiency challenge, we determine whether, after viewing all the evidence in the light most favorable to the verdict, any rational trier of fact could have found the essential elements of the offense beyond a reasonable doubt. *Klein v. State,* 273 S.W.3d 297, 302 (Tex. Crim. App. 2008) (citing *Jackson v. Virginia,*

443 U.S. 307, 319, 99 S.Ct. 2781, 61 L.Ed.2d 560 (1979)). The trier of fact resolves conflicts in the testimony, weighs the evidence, and draws "reasonable inferences from basic facts to ultimate facts." *Id*. (quoting *Jackson*, 443 U.S. at 319).

The record reveals that Cullins and SM and her family were living in the same house. Appellant was the best friend of SM's father. SM, who was thirteen years old at the time of the alleged offense, testified that she began confiding in appellant at his invitation. SM's father and stepmother had a room in the house; appellant had a room; and SM testified she was in the "kid's room." She testified SM sexually assaulted her in his room. She testified she went to appellant's room around 2 a.m. each time, because her dad was asleep; no one saw her. On one occasion, SM had on a ring. Because the ring seemed to offend appellant, SM indicated she took it off and threw it in his room somewhere. SM acknowledged she was jealous of women who had flirted with or had an interest in appellant.

SM testified she told her stepmother about the occurrences. Her stepmother contacted the sheriff's department and reported the sexual assaults. The stepmother testified she permitted SM to telephone appellant after SM told her what had happened; the phone was on "speaker." SM's stepmother heard SM tell appellant she was afraid her dad would find out, and appellant asked, "[H]ow's he going to find out[?]"

Captain Rickie Childers of the sheriff's office testified that after SM's outcry to her stepmother, he viewed SM's video interview that Child Protective Services conducted

at his request. During the video, SM mentioned the ring she had thrown down in appellant's bedroom and described how appellant had put it in a desk drawer. Childers also testified SM described a letter she had mailed to appellant and that the letter was on top of appellant's desk. Childers indicated that both items were found in appellant's room where SM had stated they would be. Childers also testified that, pursuant to a search warrant, various items were taken out of appellant's room, including pillow cases, material from the sides and bottom of the mattress, and a green blanket on the bed, portions of which were submitted for DNA testing. Childers explained that all the items seized were taken from appellant's bedroom; nothing was taken from the hall closet.

The State presented DNA evidence from a blanket, pillow cases, and material from the mattress. Christy Smejkal, a forensic scientist, testified she found on the blue pillow case a mixture of semen and epithelial cells from which appellant and SM could not be excluded as contributors. The forensic scientist testified that the statistical likelihood of finding other persons in the general population who could have contributed to the stain was one in 1.027 billion for Caucasians, one in 214 billion for Blacks, and one in 4.119 billion for Hispanics.

Norma Sanford, a certified sexual assault nurse examiner, examined SM approximately two weeks after the alleged occurrence. Sanford testified there "was no acute trauma noted[,]" but there was "a healed laceration" "indicative of penetration[,]" and consistent with penetration within the time frame SM had described. Because of the

amount of time that had passed since the alleged offense, Sanford testified she did not conduct a comprehensive examination on SM for DNA or pubic hair.

Five witnesses, including appellant, testified for the defense. SM's friend, BE, testified she had stayed at appellant's home a couple of years ago, but she could not remember the month. At one point, SM stayed there too. BE stated she never saw SM go into appellant's room in the middle of the night. BE also testified, "I just don't think that he would do that. I mean, I don't know for sure or not. I just don't think that he would do that. . . . I don't really know if it happened or not."

DA, appellant's son, testified that he stayed some of the summer in 2006 with appellant. SM, her dad, and stepmother were staying there also. DA explained that SM slept in the "kid's room," and he slept on the floor in appellant's room on a blanket. Although DA acknowledged he did not stay at appellant's house the entire time, he indicated he did stay there "weeks at a time." He never saw SM come into appellant's room late at night.

DA's mother testified that appellant was her ex-husband. She indicated DA was at appellant's house every weekend the summer of 2006, and during July 2006 DA was staying there most of the time. He slept in his dad's room. On one occasion, DA's mother recalled finding DA sleeping in the "kid's room"; SM was sleeping with him with her head on his lap.

Appellant's mother testified for the defense. She indicated the kids had their own room at the house. DA slept in "his dad's room." Appellant's mother thought that six or seven people were spending the night at appellant's house in the first week of July 2006. She also indicated she was not in a position to know what happened between appellant and SM at the time in question when she was not in the house.

Appellant testified on his own behalf. He denied ever sexually assaulting SM. He testified DA stayed in appellant's bedroom "[p]retty much" the whole time in July 2006 and through the rest of the summer until DA went back to school. There were other people in the house at different times during July as well. The kids had blankets, which were kept in a closet in the hall. Appellant denied that the blanket tested for DNA was his.

On rebuttal, SM's father testified that he was on one occasion in appellant's presence while appellant was talking to SM over the phone. The father indicated that appellant at one point stated, "[W]ell, why would he find out." "[W]hen [appellant] got off the phone I said find out about what. And he said it's a surprise they got for you I think."

In challenging the legal sufficiency of the evidence, appellant argues the evidence is insufficient. He points out there were no witnesses to the incident and relies on the following evidence: SM did not immediately tell anyone about the sexual assault; SM told her stepmother about the sexual assault a few days after the incident; the nurse's

exam revealed "no acute trauma[,]" although it did reveal a "well healed partial transection at the 5 o'clock position of the hymenal ring"; DA testified he slept on the floor in appellant's room every night when there; DA indicated he never saw SM come into appellant's room late at night; and he never saw appellant make any sexual advances toward SM.

We have reviewed the evidence in the light most favorable to the verdict and have given deference to the trier-of-fact's responsibility to fairly resolve conflicts in testimony, to weigh the evidence, and to draw reasonable inferences from basic facts to ultimate facts. The uncorroborated testimony of a child victim is alone sufficient to support a conviction. *See* TEX. CODE CRIM. PROC. ANN. art. 38.07 (Vernon 2005); *Tear v. State*, 74 S.W.3d 555, 560 (Tex. App.--Dallas 2002, pet. ref'd). In this case, the record also reveals other evidence, including the expert testimony, supporting SM's account of the events. We conclude the evidence is legally sufficient to support the verdict. A rational jury could have found beyond a reasonable doubt that appellant committed the offense of aggravated sexual assault of a child.

We overrule appellant's issue. The judgment is affirmed.

AFFIRMED.

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DAVID GAULTNEY
Justice

Submitted on February 22, 2010
Opinion Delivered March 10, 2010
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Before McKeithen, C.J., Gaultney and Kreger, JJ.