



**COURT OF APPEALS  
SECOND DISTRICT OF TEXAS  
FORT WORTH**

**NO. 02-15-00301-CR**

BILLY JOE THOMPSON

APPELLANT

V.

THE STATE OF TEXAS

STATE

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FROM CRIMINAL DISTRICT COURT NO. 1 OF TARRANT COUNTY  
TRIAL COURT NO. 1358558D

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**MEMORANDUM OPINION<sup>1</sup>**

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A jury convicted Appellant Billy Joe Thompson of six counts of aggravated sexual assault of a child and two counts of indecency with a child by contact. The jury then assessed his punishment at 75 years' confinement on each of the six counts of aggravated sexual assault of a child and at 20 years' confinement on each of the two counts of indecency with a child by contact. The trial court

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<sup>1</sup>See Tex. R. App. P. 47.4.

sentenced Thompson in accordance with the jury's verdicts and ordered his sentences to run concurrently. On appeal, Thompson contends the evidence is insufficient to support his convictions. We affirm.

### **Background**

In the indictment, the State alleged six counts of aggravated sexual assault of a child under Texas Penal Code section 22.021 and two counts of indecency with a child by contact under Texas Penal Code section 21.11. Each count arose out of an alleged incident on or about January 5, 2014, in Tarrant County, Texas.

- In Count 1, the State alleged that Thompson intentionally or knowingly caused the female sexual organ of complainant, "Jane," a child younger than 14, to contact Thompson's sexual organ.<sup>2</sup> See Tex. Penal Code Ann. § 22.021(a)(1)(B)(iii), (a)(2)(B) (West Supp. 2016).
- In Count 2, the State alleged that Thompson intentionally or knowingly caused Jane's sexual organ to contact his mouth. See *id.*
- In Count 3, the State alleged that Thompson intentionally or knowingly caused Jane's mouth to contact Thompson's sexual organ. See *id.* § 22.021(a)(1)(B)(v), (a)(2)(B).
- In Count 4, the State alleged that Thompson intentionally or knowingly caused Jane's anus to contact his sexual organ. See *id.* § 22.021(a)(1)(B)(iv), (a)(2)(B).
- In Count 5, the State alleged that Thompson intentionally or knowingly caused the penetration of Jane's sexual organ by inserting a sex toy into her. See *id.* § 22.021(a)(1)(B)(i), (a)(2)(B).

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<sup>2</sup>To protect complainant's identity, we will refer to her through a pseudonym. See *McClendon v. State*, 643 S.W.2d 936, 936 n.1 (Tex. Crim. App. [Panel Op.] 1982); *Sampson v. State*, No. 02-15-00202-CR, 2016 WL 4474339, at \*1 n.3 (Tex. App.—Fort Worth Aug. 25, 2016, pet. ref'd) (mem. op., not designated for publication).

- In Count 6, the State alleged that Thompson intentionally or knowingly caused the penetration of Jane's anus by inserting a sex toy into her anus. *See id.*
- In Count 7, the State alleged that, with the intent to arouse or gratify his sexual desire, Thompson intentionally engaged in sexual contact with Jane by causing her to touch Thompson's genitals. *See id.* § 21.11(a)(1), (c)(2) (West 2011).
- In Count 8, the State alleged that, with the intent to arouse or gratify his sexual desire, Thompson intentionally engaged in sexual contact by touching Jane's genitals. *See id.* § 21.11(a)(1), (c)(1).

The jury found Thompson guilty of all eight counts.

### **Thompson's Sufficiency Issue**

In Thompson's sole issue, he asserts that the evidence is insufficient. He does not, however, argue that the State failed to present evidence supporting each of the eight counts' elements. Our review of the forensic interview, which was admitted in evidence and played for the jury, and of Jane's trial testimony shows evidence supporting each count.

Rather, Thompson argues that the State's evidence should not have been believed beyond a reasonable doubt. First, he argues that Jane's testimony was confused, contradictory, and not believable. Second, he argues that the State presented no physical evidence of any sexual assault. Finally, he argues that other evidence casts doubt on Jane's testimony.

### **Standard of Review**

In our due-process review of evidentiary sufficiency to support a conviction, we view all evidence in the light most favorable to the verdict to

determine whether any rational factfinder could have found the crime's essential elements beyond a reasonable doubt. *Jackson v. Virginia*, 443 U.S. 307, 319, 99 S. Ct. 2781, 2789 (1979). This standard gives full play to the factfinder's responsibility to resolve conflicts in the testimony, to weigh the evidence, and to draw reasonable inferences from basic facts to ultimate facts. *Id.* at 319, 99 S. Ct. at 2789; *Murray v. State*, 457 S.W.3d 446, 448 (Tex. Crim. App.), *cert. denied*, 136 S. Ct. 198 (2015).

The factfinder alone judges the evidence's weight and credibility. See Tex. Code Crim. Proc. Ann. art. 38.04 (West 1979); *Dobbs v. State*, 434 S.W.3d 166, 170 (Tex. Crim. App. 2014). Thus, when performing an evidentiary-sufficiency review, we may not reevaluate the weight and credibility of the evidence and substitute our judgment for the factfinder's. See *Montgomery v. State*, 369 S.W.3d 188, 192 (Tex. Crim. App. 2012). Instead, we determine whether the necessary inferences are reasonable based on the evidence's cumulative force when viewed in the light most favorable to the verdict. *Murray*, 457 S.W.3d at 448. We must presume that the factfinder resolved any conflicting inferences in favor of the verdict, and we must defer to that resolution. *Id.* at 448–49.

### **Discussion**

Thompson points to numerous instances where Jane's testimony was confused, contradictory, and allegedly not believable. Jane was eight at the time of trial and six when she asserted that Thompson sexually abused her.

For example, Thompson notes that Jane failed to identify him in court—but concedes that she identified a photograph of him. Moreover, Jane’s mother testified that Thompson looked different at trial, saying that the photograph Jane used to identify him reflected his appearance at the time of the offenses.

Thompson also stresses that Jane called him “Joey,” claiming that because his first name is Billy, not Joey, Jane might not have even been referring to him. But not only did Jane’s mother identify him as “Joey,” his own trial counsel repeatedly used that diminutive of his middle name, Joe.

Other purported inconsistencies do not warrant overturning the jury’s verdict. The forensic interview was conducted three days after the offenses in the indictment allegedly occurred. Jane testified at trial in August 2015, over a year and a half later. The jury could properly have attributed some of the inconsistencies in her testimony to the passage of time. Additionally, the relatively contemporaneous forensic interview covered all but possibly the seventh count, and Jane’s trial testimony was clear on that count.

Because Jane was only eight years old at the time of trial, the jury could also have attributed some of her inconsistencies to her age and the circumstances—being interviewed by a friendly social worker in a small room is hardly the same as testifying from the witness stand in a courtroom full of people. And even during the forensic interview’s more intimate setting, Jane expressed reservations about talking in front of the camera.

The jury was the sole judge of the weight and credibility to give Jane's testimony. See *Dobbs*, 434 S.W.3d at 170. When performing a sufficiency evaluation, we may not substitute our weight-and-credibility determinations for those of the jury. See *Montgomery*, 369 S.W.3d at 192. We must presume that the jury resolved all conflicting inferences about which Thompson complains in favor of the verdict, and must defer to that resolution. See *Murray*, 457 S.W.3d at 448–49. Notwithstanding any discrepancies and inconsistencies in Jane's testimony, the jury believed her, and we may not second-guess that determination. See *id.*

Thompson argues that no physical evidence existed of any sexual assault. But other evidence admitted at trial showed that such lack of physical evidence was not dispositive.

The sexual-assault nurse examiner (SANE nurse) testified, for example, that a sexual assault would not always leave an injury. She said that only five to ten percent of children seen for sexual assaults have injuries, and that even in confirmed cases of sexual abuse, it was possible for children not to show any injuries.

Regarding the chances of collecting DNA—another possible type of physical evidence—the SANE nurse testified that the passage of 24 hours or more decreases those chances dramatically. The SANE nurse's understanding was that she was seeing Jane three days after the last sexual assault.

Furthermore, during the forensic interview Jane described Thompson's ejaculating on the bed and also mentioned that she had showered afterward.

Thompson maintains that other evidence casts doubt on Jane's testimony. For one thing, he points out that she made her initial outcry only when her mother was questioning her about why she was being punished. From this, Thompson argues that Jane was trying to divert attention away from her own misbehavior by alleging that someone else—Thompson—did something worse. Thompson also stresses evidence showing that Jane had been exposed to adult materials, such as the *Twilight* movie, in which people took their clothing off and during which Jane heard groaning. Thompson further notes that Jane admitted playing with her mother's toys and hearing her mother and Thompson's having sex, and that Jane's mother acknowledged that her daughter would lie when she was in trouble.

Although in discussing this evidence Thompson does not explicitly raise the reasonable-alternative-hypothesis theory, the gist of his argument is that the evidence could be interpreted in ways that were consistent with his innocence and that the State's evidence failed to disprove.

The reasonable-alternative-hypothesis theory does not apply to an evidentiary-sufficiency review. *Wise v. State*, 364 S.W.3d 900, 903 (Tex. Crim. App. 2012) ("For the evidence to be sufficient, the State need not disprove all reasonable alternative hypotheses that are inconsistent with the defendant's guilt."); *Wirth v. State*, 361 S.W.3d 694, 698 (Tex. Crim. App. 2012) (discounting

an alternative hypothesis that a court of appeals had proposed with respect to a theft conviction). It is unnecessary for every fact to point directly and independently to the accused's guilt; it is enough if the cumulative force of the incriminating evidence warrants a guilty finding. *Dobbs*, 434 S.W.3d at 170; *Temple v. State*, 390 S.W.3d 341, 359 (Tex. Crim. App. 2013). The court of criminal appeals has in any event disavowed the reasonable-alterative-hypothesis construct. See *Ramsey v. State*, 473 S.W.3d 805, 811 (Tex. Crim. App. 2015). Put differently, the proof-beyond-a-reasonable-doubt standard does not require the State to disprove every conceivable alternative to a defendant's guilt. *Id.* at 808.

The jury had before it all the information about which Thompson complains and, by its verdicts, rejected the inference that Jane—using knowledge from her exposure to movies, from her playing with her mother's toys, and from hearing noises from her mother's bedroom—fabricated the allegations to avoid punishment (or for any other reason).<sup>3</sup> The question again is one of weight and credibility, for which jurors are the sole judges. See *Dobbs*, 434 S.W.3d at 170. We are simply not free to substitute our own weight-and-credibility determinations. See *Montgomery*, 369 S.W.3d at 192.

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<sup>3</sup>In any event, Jane's perceptions of fitting punishments appeared skewed. During the forensic interview, Jane described how Thompson would punch both her and her brother, causing bruises. When asked why Thompson punched them, she responded that that was how Thompson showed his love for them.



In another part of Thompson’s brief, he appears to rely on an outmoded factual-sufficiency analysis, citing *Johnson v. State*, 978 S.W.2d 703, 707 (Tex. App.—Corpus Christi 1998), *aff’d*, 23 S.W.3d 1, 11 (Tex. Crim. App. 2000). The court of criminal appeals has since held that there is no meaningful distinction between the legal-sufficiency standard and the factual-sufficiency standard when it comes to proving an offense’s elements beyond a reasonable doubt. *Brooks v. State*, 323 S.W.3d 893, 895, 912 (Tex. Crim. App. 2010). Thus, the U.S. Supreme Court’s *Jackson* standard is the “only standard that a reviewing court should apply in determining whether the evidence is sufficient to support each element of a criminal offense that the State is required to prove beyond a reasonable doubt.” *Id.* at 912; see *Acosta v. State*, 429 S.W.3d 621, 624 (Tex. Crim. App. 2014) (“[W]e review the sufficiency of the evidence establishing the elements of a criminal offense under the single sufficiency standard set out in *Jackson v. Virginia*.”).

In sum, viewing the evidence in the light most favorable to the verdicts, we hold that any rational factfinder could have found the essential elements of the eight offenses beyond a reasonable doubt. See *Jackson*, 443 U.S. at 319, 99 S. Ct. at 2789. We overrule Thompson’s sole issue.

### **Conclusion**

Having overruled Thompson’s sole issue, we affirm the trial court’s judgments.

/s/ Elizabeth Kerr  
ELIZABETH KERR  
JUSTICE

PANEL: LIVINGSTON, C.J.; SUDDERTH and KERR, JJ.

DO NOT PUBLISH  
Tex. R. App. P. 47.2(b)

DELIVERED: February 23, 2017